TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 70

THE PEOPLE'S NATURAL GAS COMPANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, JOHNSTOWN FUEL SUPPLY COMPANY, AND JOSEPH GAUFFIELD, ETC.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

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[fol. 1a] **BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA**

Complaint Docket, No. 1098

LOUIS FRANKE

vs.

JOHNSTOWN FUEL SUPPLY COMPANY

In re Alleged Unjust and Unreasonable Increase in Rates for Gas Service for Both Domestic and Industrial Consumers in the City of Johnstown

Complaint Docket, No. 1083

CAMBRIA STEEL COMPANY

vs.

JOHNSTOWN FUEL SUPPLY COMPANY

In re Alleged Unjust Increase in Rates for Gas for Industrial Purposes

[fol. 2a] Stenographic Report of the Proceedings Before the Public Service Commission of the Commonwealth of Pennsylvania

Messrs. Guilbert & Lewis, Stenographers, Reported by Chas F. Phillips

Conference with the Public Service Commission of the Commonwealth of Pennsylvania, Held in the Supreme Court Room, Capitol, Harrisburg, Pa., on Friday, June 1st, 1917, at 10 a. m.

APPEARANCES OF COUNSEL

Present:

Commissioner Ainey, Chairman.

H. E. Ehlers, Assistant Chief, Bureau of Engineering, Public Service Commission.

David I. McCahill, Esq., and C. B. Miller, Esq., Representing Johnstown Fuel Supply Company.

Tillman J. Saylor, Esq., Representing City of Johnstown and Cambria Steel Company.

Christy Payne, Esq., and A. T. C. Gordon, Esq., Representing Peoples Natural Gas Company.

[fol. 3a] Mr. P. J. Morrissey, General Manager of Johnstown Fuel Supply Company.

Mr. W. A. Reiber, Secretary of Johnstown Fuel Supply Company.

Mr. F. E. Haag, Auditor of Johnstown Fuel Supply Company.

Mr. F. T. Hepburn, Vice President of Johnstown Fuel Supply Company.
Mr John G. Pew, Vice President of People's Natural Gas Company.
Farley Gannett and J. C. Crissey, Engineers.

COLLOQUY BETWEEN COMMISSION AND COUNSEL

By the Chairman: Gentlemen, two complaints, as you know, have been filed against the Johnstown Fuel Supply Company, and engineering conferences have been had. I think possibly we might say that as a result of those conferences the complainants and the respondent are not far apart. As the Johnstown Fuel Supply Company is a distributing company, in so far as the territory here served is concerned, there are some questions which have confronted them, and which, it has been suggested, might be considered, and possibly we might reach some conclusion if we could gather together not in the way of a formal hearing, and not for the purpose of predicating any order as a result of this conference today; but merely to take [fol. 4a] advantage of the privilege which we might have of talking things over around a table, and if we can hear from you as to what the situation is today, and what the difficulties that you find in the way of a consummation of that which you believe to be needed to be consummated, and if by talking it out we can come to some conclusion, then the results of the conference will be satisfactory to the Commission. Possibly the attorney representing the Johnstown Fuel Supply Company can take the laboring oar of stating what the situation is, and what we may be able to accomplish as a result of this conference.

By Mr. McCahill: May it please the Commission: As I understand, the situation is this: The engineers for the city and for the Commission and for the Johnstown Fuel Supply Company have had frequent conferences, and while they have not been able to agree upon the last detail necessary for a valuation, they have reached the point where it is evident that the Johnstown Fuel Supply Company, if it expects to continue serving the public of the City of Johnstown, will have to have additional revenue. The amount of revenue which the Johnstown Fuel Supply Company claim, and which they think they ought to have, is approximately seventy thousand dollars annually additional. The rates which they have filed here would produce in the neighborhood, based upon the present number of consumers they have, of approximately $54,000. The valuation which has been reached—that is, as far as they have gone, as of August 1st, 1916, taking into consideration the operating expenses—justifies the additional revenue which they are asking. In fact, it more than justifies the additional revenue. I think I am safe in saying it justi- [fol. 5a] fies the seventy thousand dollars additional which they think they ought to have, but which they have not asked for in the rates that they have filed. The rate, as I understand, which they have filed is the readiness-to-serve charge, or the customer charge, of fifty

cents per customer per month, which will result in six dollars per customer per year, and they have about nine thousand customers, which would return to them $54,000.

The Johnstown Fuel Supply Company think that their method of adding to their net revenue is just and fair and ought to be approved. As I say, we have not fully agreed with the engineers for the city and for the Commission upon the physical valuation which we would be entitled to if the matter should be contested to its last analysis. They have reached a figure of something in excess of, I believe it is, $596,000, approximately, which does not include any intangibles, and, on the other hand, does not in any way account for depreciation. We do not accept the city's or the Commission's theories of depreciation, and neither do they accept ours. We have not fully agreed upon intangibles. These figures represent no intangibles of any kind, but merely the ordinary overhead, and do not, of course, include any deficits, or matters of that kind.

At the request of Mr. Saylor we are here today—and we met before in Pittsburgh—to see if there is some other way in which this money can be secured by the Johnstown Fuel Supply Company. If there is any other way, the Johnstown Fuel Supply Company will be glad to adapt its conditions and its operations to meet the suggestion of the Commission, or of Mr. Saylor, or of the People's Natural Gas [fol. 6a] Company, to reach an equitable adjustment of the matters which are now confronting them.

By Mr. Saylor: May it please the Commission: In this matter the City of Johnstown and the Cambria Steel Company filed exceptions to the schedule of tariffs filed with the Commission by the Johnstown Fuel Supply Company, of the City of Johnstown. The predecessors of the Johnstown Fuel Supply Company in the city, when they secured an ordinance in the City of Johnstown to supply the city with gas, paid the City of Johnstown ten thousand dollars for that privilege, and in this ordinance at that time agreed with the City of Johnstown—the ordinance became operative when it was accepted by the operating directors of the predecessor of the present Johnstown Fuel Supply Company—in that ordinance they agreed to furnish gas to the city of Johnstown, and that the maximum charge should not be more than thirty-five cents a thousand cubic feet. The company never charged thirty-five cents, but they fixed the rate at thirty cents.

Now, the local company, the Johnstown Fuel Supply Company, as we take it, and as evident from the appraisals that were made, felt that they were not making the net revenue in the City of Johnstown which they were entitled to from their investment. Consequently they filed a new schedule with the Commission, and to make up this additional revenue which they claim they provided for a readiness-to-serve charge, amounting to fifty cents a month.

[fol. 7a] Now, in the appraisal that was made by the city of the plant we are satisfied that the net revenue that the local company is getting is not sufficient, considering its investment, if that line is considered. We are not willing to admit they are entitled to $70,000, as they claim, nor are we willing to admit that they are en-

titled to about $54,000 a year, which the new schedule will net them, but we will say that they are entitled to get som-thing not so very far short of that.

Now, the question with us, as we look over their plant and its operations, is where shall the additional revenue come from? Are they not getting the net revenue they should by reason of mismanagement, or are they making the proper efforts to extend the business and make the gas business grow and as a consequence give them a better net revenue?

One of the surprising things to us is that about seventy per cent. of the revenues of the local company are paid to the Peoples Natural Gas Company, which company supplies the fuel to the local company. In the answer filed by the Fuel Company they allege that about seventy per cent of their gross receipts were paid to the Peoples Natural Gas Company. The Commission on that ordered the People's Natural Gas Company to interplead.

Now, all the interested parties are before the Commission, and the question now for the people of the City of Johnstown and the Cambria Steel Company is where shall this additional net revenue come from?

Under the ordinance they could ask from the City of Johnstown five cents a thousand feet more. They have not seen fit to make that [fol. 8a] additional demand, but make it in a different form, and that is a readiness-to-serve charge. We think that that readiness-to-serve charge, while I am willing to admit that a readiness-to-serve charge, if properly considered, I believe is all right, but in Johnstown the readiness-to-serve charge of fifty cents will fall very heavily upon the small consumer, so that it pretty near makes it prohibitive for him to use gas. The man now who uses a thousand feet of gas, instead of paying thirty cents, will pay eighty cents for it, and our people vigorously protest against that increase, and it seems to them that it is unreasonable. If the local company is entitled to earn this additional revenue, it must either get it from the people of Johnstown, the consumers, or it must make some other efforts, and the only other source that I can see would be the Peoples Natural Gas Company. If the Peoples Natural Gas Company is charging the local company an excessive rate for gas, then I do not think that the people of Johnstown ought to be asked to pay the local distributing company an exorbitant price simply because they have made a contract with the supplying company which makes it a hardship upon our local people. Where this additional net revenue shall come from is the question that is before us.

By the Chairman: What is this contract with the People's Natural Gas Company? Have we a copy of it in our files?

By Mr. Saylor: I don't know whether there is a copy in the files or not.

[fol. 9a] By the Chairman: What rates does it prescribe?

By Mr. Saylor: I believe that it prescribes twenty-one cents a thousand feet—correct me if I am wrong—twenty-one cents a thousand feet to the domestic consumers, and I believe it provides for special rates for the manufacturing concerns who use this gas.

By the Chairman: This is the charge of the Peoples Gas Company.

By Mr. Saylor: This is the charge of the Peoples Company to the local company.

By Mr. McCahill: I would like to correct that. I understand it provides for seventy per cent., and on the present sale of gas at thirty cents that is fixed at twenty-one cents. But I do not believe the figure twenty-one cents is used in the contract.

By the Chairman: That is what I would like to know, whether it is a percentage rate or whether it is a fixed rate.

By Mr. Saylor: I believe it is a percentage rate. It amounts to twenty-one cents with the thirty cent rate. I believe under that [fol. 10a] contract, under a special contract to the Cambria Steel Company before this increase the amount was—what was the percentage to the local company?

By Mr. Morrissey: Fourteen cents out of the twenty-seven cents.

By Mr. Saylor: Fourteen cents. So that under the special contract with the Cambria Steel Company the local company paid to the supplying company, the Peoples Natural Gas Company, thirteen cents, and the local company was getting about fourteen cents. A little better from the Cambria Steel Company.

By the Chairman: What is this special contract, then? Is that really supplemental to the seventy per cent. contract?

By Mr. Saylor: No. This is the seventy per cent contract I am talking about. The seventy per cent. contract provides that special contracts may be made by the local company with manufacturing concerns who use the gas, if it is O. K.'d by the Peoples Natural Gas Company.

By the Chairman: And in which event——

By Mr. Saylor: In which event the local company pays to the Peoples Company, in the case of the Cambria Steel Company, thirteen cents.

[fol. 11a] By the Chairman: Is that provided in a supplemental agreement, or does that flow as the result of the provisions applying to the——

By Mr. Morrissey: The agreement provides a percentage basis for the payment of industrial gas.

By the Chairman: Let me get the percentage, and I will undertake a little arithmetic myself.

By Mr. McCahill: A copy of the contract is on file with the Commission.

(Copy of contract attached to the files of the Commission referred to.)

By the Chairman: Let me ask this: So far as the special contract for the supply to the Cambria Steel Company, say, does that still follow the seventy per cent. rate?

By Mr. McCahill: No. As I understand the situation—Mr. Pew or Mr. Payne can correct me on that—the contract provides that special contracts may be made with industrials, but each contract is to be approved by the Peoples Natural Gas Company. In case a contract is made, however, the Peoples Natural Gas Company will [fol. 12a] get seventy-five per cent. and twenty-five per cent., instead

of seventy per cent. and thirty per cent., as is the case with the domestic.

By the Chairman: Then, they get a larger percentage out of special contracts than they do on the general rule?

By Mr. McCahill: But as it has worked out in actual practice it has been this: Contracts have been negotiated with industrials, which have been submitted to the Peoples Natural Gas Company for approval, and they have fixed a price that they would be willing to furnish that gas at, and the supply company has been in a position to go out and get as much more than that as they could get, but I do not believe that the price which the Cambria has been paying works out on the seventy-five and twenty-five, because the Cambria has been paying 14.08, I believe, and the Peoples Natural Gas Company has been getting thirteen.

By the Chairman: Then, these special contracts were more honored in the breach than in the observance?

By Mr. McCahill: Yes. It don't work in actual practice.

By Mr. Gordon: It had to do with the surplus supply of gas.

[fol. 13a] By Mr. McCahill: Each industrial was connected up on a special contract made at the time the contract with the industrial was approved by the Peoples Natural Gas Company.

By the Chairman: Mr. Saylor, I interrupted your line of thought. Will you continue?

By Mr. Saylor: Then, apart from this contract, the question with us is how to raise the net revenue. The local company, of course, says that it is necessary to raise the price of gas, the price paid to the company, and one of the reasons they allege is that Johnstown is a town that is a poor user of gas. That is, there are fewer people that use it, and the amount of gas they use is less than in some of the other cities.

Now, we maintain that at the time this gas company got its franchise in the city the price of other fuel was known to them. It was a fact that was self-evident. When they went in there and got a franchise from the city, and put in a plant and agreed to distribute and sell gas, they knew that coal in that vicinity was cheaper than it was in other vicinities, and the mere fact now for them to say that they must increase the price of gas because coal is cheap and because fewer people use the gas, and because they use less gas, seems to us a line of argument that is not fair with the people in our community. You take the Peoples Natural Gas Company now. They bring the gas to Johnstown and sell it to the local company. They as a company take this gas across the mountain over to Altoona, to [fol. 14a] Cresson and to Huntingdon, and I understand from the schedules filed that there the Peoples Company, which sells to the local company, are selling the gas at thirty-five cents a thousand feet.

Now, to us in Johnstown it is difficult for us to see how or why the local company, plus the Peoples company, ought not to be able to sell gas to us in Johnstown for at least what the Peoples Company, with the additional investment across the mountain to Cresson, and Altoona and Huntingdon, can sell gas for, and that is thirty-five

cents. The schedule, I believe, is thirty-seven cents, with two cents discount if it is paid within a certain length of time.

So from the line that I have indicated it seems to us that the schedules filed, while from the appraisal of the plant and the investment in Johnstown it seems that the local company ought to get a greater amount of net revenue, we do not believe that this amount of net revenue should all come from the people. We believe under the circumstances that the Peoples Natural Gas Company should deliver and sell to the local company gas at such a price which would make it possible for them to operate in the local field at a fair profit without this additional or excessive charge to the local people for gas. If the local people pay as provided in the ordinance thirty-five cents, that would be an increase of five cents, and I think our people would be satisfied, but to pay more than that they are dissatisfied, and think that the local company is asking more from them than they should.

Further, we believe that if, as is stated by the Peoples Company, and also the Johnstown Fuel Supply Company, Johnstown is a poor [fol. 15a] gas town, and by reason of the fact that the coal is cheap, that by raising the price of gas they are not going to benefit the gas business in our city. We believe, in the line of their argument, that if the price of gas is kept down, and a proper effort made to educate our people, and to push the gas business in Johnstown, that this business can be made to pay the same as it does elsewhere, at a price that they are selling gas for elsewhere.

Another thing that is rather evident to us in the city is this: There is a peculiar situation there. Here is the Johnstown Fuel Supply Company and the Citizen's Light, Heat and Power Company, supplying light and heat to the city. They are interwoven. That is, they are practically one. While they are different legal entities, they are really one body of men. In pushing the gas business, of course, they consider their other business. We believe that there is a peculiar situation in Johnstown that if properly analyzed will disclose to this Commission a condition which will convince them that if these different industries are pushed as they should be, irrespective of one affecting the other, this gas business in Johnstown can be made a profitable business without this exorbitant rate demanded from the people, if the local people can get the gas from the Peoples Company at what we think is a reasonable rate, and that is considerably less than what we are now paying, because it is evident to us that if the Peoples Gas Company can take gas and with the additional investment of running this pipe line across the mountain over to Cresson and then to Altoona and then to Huntingdon, and if they there can sell gas for thirty-five cents, surely the Peoples Company can give us gas in Johnstown for domestic purposes and [fol. 16a] manufacturing purposes at a price at least what they are receiving for gas across the mountain.

By the Chairman: Do I understand you to include in your statement as to the control of these companies that the Peoples Natural Gas Company and the Johnstown Fuel Supply Company are controlled by the same interests?

By Mr. Saylor: No. If I said that I did not mean to state that.

By the Chairman: I do not know that you did say it.

By Mr. Saylor: No. I understand they are separate. Looking over the history of the Peoples Natural Gas Company and the Johnstown Fuel Supply Company—their past history—I am going to say something here which I do not know whether it could be proven, or that it cannot be proven, but it seems evident to me that originally, when these companies were originally formed, there was a mighty close link between them. That is, the people who originally got the franchise in Johnstown. It seems to me from the history of the case, as I can get it, that there was a mighty close alliance. Just what it was I am not just able to say.

By Mr. Gordon: I will have to be called upon to correct that [fol. 17a] statement. There has never been any alliance between these two companies at all.

By Mr. Saylor: I simply say that in answer to your question. What I originally meant to say was that the Citizens' Light, Heat and Power Company of Pennsylvania and the Johnstown Fuel Supply Company in Johnstown are two companies that are interlinked. That is, they are controlled practically by the same people. Whether or not these people in pushing these different activities—it seems to me that the pushing of one may interfere a little with the other, and there is a situation there which if analyzed I believe will give this commission some considerable insight on the situation in Johnstown.

By the Chairman: Mr. Saylor, are you going to be able to suggest to any of these gentlemen present some solution of this matter which you think might be worked out as a result of this conference today?

By Mr. Saylor: I have this suggestion to make, that if the City of Johnstown will pay five cents more for gas, and the Peoples Company will reduce their rate to the local company say five cents, or a schedule of reduction which would amount to practically that, we can make up this difference. I believe our people in Johnstown would be entirely satisfied to pay thirty-five cents, and if some schedule can be worked out whereby the Peoples Company would sell to the distributing company at a certain schedule of prices, it would [fol. 18a] take care of part of this difference, and that this may be worked out.

By the Chairman: But the proposed rate of Fifty cents per month in addition to the charge for the amount consumed would not be agreeable to your people?

By Mr. Saylor: That would not be agreeable to us. We think that that is excessive.

By the Chairman: Mr. McCahill, you have heard the suggestion of Mr. Saylor. Does it put you on any train that will bring you to a destination in this matter?

By Mr. McCahill: We feel this way, in reply to Mr. Saylor's statement about the franchise providing that it should not go above thirty-five cents. I have examined the franchise, and I do not believe that the customer charge of fifty cents per month violates that franchise.

By the Chairman: No; but he calls our attention to this fact, that it places a prohibitive rate upon the small consumer.

By Mr. McCahill: Yes and no. Our people contend, and I think with a great deal of justice, that the small consumer is the unprofitable consumer. He is not making expenses. When, as Mr. Saylor says, he only uses a thousand feet of gas, it does not reimburse the [fol. 19a] company for the cost of carrying him on the books. If that is the case—and I understand that our people are almost prepared to show that it is—if that is the case, then it is unfair to the large consumer to make the large consumer carry the small consumer. In formulating this rate—and it was formulated before I came into the case—I understand in formulating this rate they have arrived at what they thought was the most just rate that they could formulate. If there is a more just rate that can be worked out, the Fuel Supply Company will be only too glad to adopt it.

You asked a question about the connection between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company. There is absolutely no connection whatever, except as they are bound by the contract. The Johnstown Fuel Supply Company was bound by a contract which was entered into before the present people came into the organization to pay seventy per cent. of their gross revenue for the supply of gas. That contract is still in existence. We feel that at the present time we are bound by that contract as part of our operating expenses. We could not find any other solution except the per customer charge, which we do not think violates the terms of the contract with the Peoples Natural Gas Company, nor does it violate the terms of the franchise. We believe, however, that if it does violate either one that there is ample jurisdiction in the Public Service Commission. If they saw that the proceeds would not permit a reasonable profit for the service that the Johnstown Fuel Supply Company is furnishing. I believe the Public Service Com- [fol. 20a] mission has ample jurisdiction to set it aside. I am of the same opinion about the contract between the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, that if the price of gas as furnished by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company is exorbitant or excessive, the Public Service Commission has the right to set it aside. If it is not adequate, the public Service Commission has the right to set it aside. But those are matters, as I view them, that are entirely in the hands of the Commission. The Johnstown Fuel Supply Company, of course, is not taking the initiative in the breaking of any contract which has been entered into between it and any customer, or between it and any company furnishing it with supplies of fuel gas. We believe that in justness and fairness to everyone in the City of Johnstown a fifty cent per month customer charge is the most fair and equitable arrangement that could be worked out, but, as before stated, if there is any other rate than can be suggested or submitted, the Johnstown Fuel Supply Company stands ready to accept it.

By Mr. Saylor: As Mr. McCahill says, the relationship that now exists between the Peoples Natural Gas Company and the Johnstown

Fuel Supply Company is by reason of this contract. I do believe that if this contract were not in existence that the local company never would have filed the schedule they have filed. Here is a contract between the Peoples Natural Gas Company and the local company. The local company feel that they have been operating at a loss. They have been paying too much of their income to the [fol. 21a] Peoples Natural Gas Company. Now, then, they devise some scheme whereby they can get some money down there and hold it themselves, and I think they are justified in taking that attitude. This fifty cents under this contract the local company maintains belongs to them.

By the Chairman: As a service charge.

By Mr. Saylor: As a service, and under the contract the Peoples Company cannot get any part of it. Now, that contract being in existence, this contract, made between these two companies we feel it is working a hardship and is an unwise contract from the present situation that has been made between these two companies, as we view it. Now, ought our local people to suffer by reason of this contract? Here is a contract that I believe this Commission has jurisdiction to look into. If it is not right, to make it right. I do not believe that we as a people should suffer by reason of this unwise contract. I do believe that if this contract were not in existence that the local people would have filed a very different rate, or tariff.

Now, just a little farther. Where is this money to come from? I believe under the circumstances, as I said, the city of Johnstown would be willing and ought to pay a little more for its gas, and I also believe that the local company, the Johnstown Fuel Supply Company, ought to make some sacrifice now, in the hope of making such a schedule which will make it possible for them to extend the gas business in Johnstown. Extending the business, by reason of an ex- [fol. 22a] tension of the business and a growth of the business will net them a greater revenue. If they make a small sacrifice, the city of Johnstown pays a small sum in addition for gas, and then if our friends, the Peoples Natural Gas Company, care to be a little bit more charitable to the local company and sell them gas at such prices which will make it possible for the local company to do business, I think that we can get together nicely.

By the Chairman: Suppose we hear from the Peoples Natural Gas Company, and see if the suggestion meets with favorable response.

By Mr. Gordon: The Peoples Natural Gas Company is in a rather peculiar position in this controversy. They were not an original party to the complaint. They merely interposed at the request of the Commission, it appearing in the answer of the Johnstown Company that there was a contract between the People's and the Johnstown.

Now, when this contract was first entered into in the year 1906, the Peoples Company did not have their line running as far east as Johnstown, but on the strength of their contract they constructed their line and started to serve the people of Johnstown, through the

Local Company. While it is true that contract provided, so far as domestic consumers are concerned, for seventy per cent. to be paid to the Peoples, it also provided that the Peoples were to receive a [fol. 23a] minimum amount, and the very first charge for gas that was fixed after the entering into of that contract was the thirty cent rate, and that has been in effect from that day to this. Under our contract we claim a higher rate than thirty cents. We claim now a rate that will net the Peoples Gas Company twenty-four and a half cents per thousand feet, and that would be seventy per cent of a thirty-five cent rate.

Now it stands to reason, and I think it is very well known, that natural gas is a much dearer product today than it was ten years ago, and while we are here simply to protect our private contract with the Johnstown Company I think we are prepared to show that we can market all the gas we have at a rate as high, if not higher, than the rate we are now obtaining under our Johnstown contract. That is, we can sell our gas in Pittsburgh and other points for a higher rate, or as high a rate, as we are now obtaining in Johnstown. So I do not think Mr. Saylor is correct in saying that it is an unequitable contract because we get seventy per cent. It is true we get seventy per cent., but we also provide in the contract for a minimum rate. That is, when the contract was entered into it was twenty-one cents, and after, I think, the year 1911, twenty-four and a half cents. We have never gotten the twenty-four and a half cents, although we have made considerable effort to get it, and we think that we are entitled at this time, with the high price of gas, to have twenty-four and a half cents return.

But we have no suggestion to make. We are merely here to see that our contract is protected—our contract rights are protected.

[fol. 24a] By the Chairman: It appearing, or at least stated here, that the Johnstown Fuel Supply Company must receive a larger net revenue than it does in order to maintain itself, and that unless it is able to keep from you the results of the readiness-to-serve charge, as to which I do not know what your position is, whether you think you can do that or cannot, but assuming that they can, all other sources of increase which are provided by their tariff you take substantially seventy per cent. of.

By Mr. Gordon: Yes, sir.

By the Chairman: So that if there is an increase of ten thousand dollars, seven thousand dollars of it would go to your company, and therefore they would be meeting their obligations to themselves to the extent of only three thousand dollars. Have you any suggestion that you would be willing to make to them, and through them to the Commission, as to a solution of this difficulty?

By Mr. Gordon: The only suggestion we have so far made is that additional efforts be made to educate the people of Johnstown to use more gas. Now, the present use of gas in Johnstown is, I understand, less than fifty per cent. per capita what it is in a city like Pittsburgh—only one-third of what it is in the City of Pittsburgh. In the city of Altoona, where this company has been doing

business for over four years, the consumption of gas in that four-
[fol. 25a] year period is greater per capita than the consumption of gas in Johnstown.

By the Chairman: Do you think you are going to be able to educate them to the use of gas under increased rates?

By Mr. Gordon: Well, we are not in the field of supplying gas to the consumers, and we cannot very well handle the Johnstown district, but so far as our experience in other sections and other centers, the people have been educated.

By the Chairman: I was asking you as to a solution that you would suggest of the problems which presently confront us in Johnstown, and I understood you to say that the solution was by getting the people to take a larger amount of gas. Of course, that immediately goes back to your company under the present contract. Without in any wise binding yourself, or any of you, because this is purely a conference, gentlemen—this record that we are making is merely for our convenience, and what is being said here will have no weight and effect with respect to the formal record in the case—is there on the part of your company any acceptance of the thought that possibly a modification of your contract could be accomplished in the aid of this solution of this problem here before us?

By Mr. Gordon: We do not feel that there should be any reduction of the price or modification.

[fol. 26a] By the Chairman: You understand in asking this question I do not want to embarrass you or your company in any way, and neither was I seeking to find out just what you would do, but if you think there might be some way by which you could meet with these people and reach a solution of this matter along lines that Mr. Saylor indicated, or Mr. McCahill, or some of the others. The Commission would welcome a solution that would be adjusted by the parties and brought to us rather than one which we might be forced arbitrarily to make. Personally, I have great confidence in the round table method of disposing of matters rather than any other.

By Mr. Gordon: I would like to suggest, in contradiction of the statement made by Mr. Saylor, that there has never been in any way any connection between the Peoples Company and the Johnstown Company. The interests that first acquired the Johnstown Company were in no wise related to the Peoples Company, nor have any subsequent or future interests been in any way connected with the Peoples Company. The original parties were Mr. Crawford, of Pittsburgh, an experienced oil and gas man, who understood the gas situation throughout the country as well probably as any man that we know of, and he figured at that time that the contract entered into by the Johnstown people with the Peoples people was a fair contract. Now, gas in those days was more plentiful than it is in these days, and still the same price prevails. The thirty cent rate still prevails under the present proposed tariff. It still is a [fol. 27a] thirty cent rate, with the additional fifty cents a month readiness-to-serve charge.

By the Chairman: We will be very glad to hear from any others.

By Mr. Saylor: Here is a thing in the contract that seems unreasonable to us. Thirty cents is the price. The Peoples Company gets seventy per cent. If the Local Company feels that it must raise its price to get a sufficient net revenue to justify the business in its investment, it raises five cents and immediately the Peoples Company gets seventy per cent. of that five cents, with no apparent increase in the cost of production or in any way affecting it. They get seventy per cent. increase, and it seems to us that that is entirely against the policy of the making of rates, because it all depends upon the cost of production and the cost of supplying it to the consumer. Arbitrarily the Peoples Company get seventy per cent. of any increase that is made.

By the Chairman: You catch the point that Mr. Saylor makes?

By Mr. Gordon: I catch the point that he makes, but if we undertake to readjust that and give the Peoples Company a fixed price rather than have a percentage return our rates would be higher than the twenty-one cent rate that he now complains of. We would fix a schedule of rates at twenty-four and a half, and probably twenty-five or twenty-six or twenty-seven, as we have in other sec-
[fol. 28a] tions. So I say his argument is not good until we reach a point above the fair price of gas. Now, I should say after twenty-six or twenty-seven cents was reached, then his argument would have some force. They did undertake to raise the price from thirty to thirty-five. But we have not reached that point yet.

By Mr. McCahill: I would like to correct a statement that was made a while ago, and that is as to the willingness of the Johnstown Fuel Supply Company to do everything they can to increase the business. I understand from our people there that they have not only done everything they could, but they are keeping at it persistently, in trying to increase the business. It is true, what Mr. Saylor says, that the electric company and the gas company there are controlled by the same interests, but each has its own function to perform, and it is performing that function. The Electric Light Company does not attempt to go into the heating business at all. There is little if any furnace heating by the gas company. It is largely cooking, and very little lighting. The lighting company takes care of the lighting. There is little, if anything, they could do to change those conditions, if they were separate companies. The price of coal has always been very low around Johnstown. The natural gas has to compete with coal in heating. It has to compete with coal to a large extent in cooking.

At a conference that was held in Pittsburgh sometime ago Mr. Pew was strong in the statement that the consumers of the Johns-
[fol. 29a] town Fuel Supply Company were using gas largely as a luxury, not as a necessity; they were using it at a time when it would be convenient, and not at a time when they would ordinarily use it. That is, if they could not get coal at the price which they were paying. That accounts for the low consumption per customer. That to us accounts for the fact that the small consumers don't pay the cost of carrying them on the books and reading meters which allows a return upon the investment. We believe that if Mr. Pew

is correct in his statement that the consumers are using it largely as a convenience and not in their every day consumption, that they ought to pay for it as a convenience.

By Mr. Saylor: Here is another thing that it is a little difficult for us to understand: Mr. Gordon now says that they would charge twenty-six or twenty-seven cents to make up a less rate, or in lieu of their getting seventy per cent. In the local field they supply at one point to a distributing company gas. Now, part of that goes to the distributing company for distribution to manufacturing concerns, and for which they were only getting thirteen cents. Now, that is one-third of what they were getting for the domestic consumption.

By the Chairman: How much do they get out of the Cambria Steel Company contract?

By Mr. McCahill: That has been discontinued.

[fol. 30a] By Mr. Saylor: That was discontinued just lately. I mean for manufacturing consumption it was about one-third.

By Mr. McCahill: The Peoples Natural Gas Company notified the Johnstown Fuel Supply Company to cut off all industrials, that the gas supply was short and they would not be able to furnish any more gas for industrials.

By Mr. Gordon: The domestics are always given the preference to the gas, and the surplus is sold to manufacturing concerns, under special contracts by which the supply can be terminated on notice.

By Mr. Saylor: The point I was trying to make was this: The local company until recently, when the manufacture gas supply was cut off—about one-third of the gas supplied by the local company was used for domestic consumption. The other two-thirds were used by manufacturing plants, and for the two-thirds of the gas supplied they received thirteen cents, or were paid thirteen cents. For the one-third that was used by the public generally they got twenty-one cents. Now, it is difficult for us to see why the difference. It seems to us that it would cost them as much to distribute it at that point for manufacturing purposes as it would for domestic consumption.

By Mr. Gordon: I would like Mr. Pew to explain that. He is more familiar with this gas business.

[fol. 31a] By Mr. Pew: Your Honor, the gas for manufacturing purposes—the contracts are always made with the privilege of shutting the gas off in the winter time to take care of domestic business. In the summer time, when the domestic business has a very high peak load—and in the natural gas business I believe more than any other business—in the summer time the domestic consumption will be about three per cent. of the entire supply of the year during the months of June, July and August. That will vary from two and a half, to four and a half, according to the weather. In the winter time, in December, January and February, that will vary any place from twelve and half to sixteen per cent. in each one of those months of the year supply. Sometimes it will run as high as forty per cent. in three months of the entire year's supply. Consequently we have a large carrying capacity on the lines in the summer time, and there

are extraordinary warm seasons when we can carry manufacturers the whole year through. In my whole experience in the gas business of thirty years we have always had to cut off manufacturing gas in the real cold weather in the winter time. Now, if we were fortunate in getting an extraordinary supply—you know, we go into the earth for our supply, and we have periods of extraordinary large amount of gas—you might call it luck in drilling—we have had short periods of the year when we have had shortages. We have had years when we have had to shut off all our manufacturers in years past. Last year we had such a period again that we had to shut off our gas. We shut off our manufacturers in Altoona. We shut off our manufac- [fol. 32a] turers in Johnstown. We shut off our manufacturers in Pittsburgh for weeks at a time to take care of this domestic peak load, which we could not take care of otherwise. We could not get the gas for them. There are times that we can sell the gas, just like an electric light company can sell to manufacturers during the day time electric light at a very cheap rate. We can sell to the manufacturers during the summer time, which use the same amount day in and day out, and during the winter time we have to shut off that gas to give it to the domestic consumer, where we have to take care of a big load and a big investment.

I would like to go a little into that old organization of the Johnstown Fuel Supply Company, if you will permit. Mr. Saylor seems to think we have an interest in it.

By the Chairman: As far as I am concerned, it is absolutely not material whatever with respect to us. My question was really predicated upon a desire to ascertain whether there was any present relationship between you people that would allow you, all of you together, to have unusual bowels of compassion.

By Mr. Pew: I would like to say this, that the old company, Mr. George Crawford, who organized the company at Johnstown, went to Johnstown and took an ordinance from the city, and he had his own gas in West Virginia. After he had his ordinance he figured what it would cost him. He came to our company himself and asked us if [fol. 33a] we would supply him gas. We agreed to sell him gas, and we made a contract with him, and while he is selling gas, and was then, in supplying West Virginia, Pennsylvania and Ohio, and after he had commenced—and he is probably the largest natural gas man in the United States today—he came to us and made a contract by which he agreed to pay us seventy per cent. for a period of five years, and thereafter seventy-five per cent., feeling that he would be able to do the business in Johnstown and make good money out of his distributing plant. He began the business. Now, there are contracts all over the United States where they are getting any place from sixty-six and two-thirds to seventy-five per cent., according to just how near they come to the city limits; how far the city man has to carry and how far the producer has to carry. This is not an unusual contract. In fact, by the very contract we made with these people we were to get seventy-five per cent. as soon as they went out and got business, and we should get seventy-five per cent. at the present time. We were just a little afraid that they would not push the business when the new company bought it.

By the Chairman: Your contract, then as you understand it, is based upon what? It is based upon the gross receipts of the company?

By Mr. Pew: The gross receipts. We are not selling a foot of gas anywhere, even for manufacturing purposes, at less than twenty cents, and there is not any in the Pittsburgh district, because it is short.

[fol. 34a] By the Chairman: I cannot quite see your position in this particular view: We are confronted here by what appears to be an admitted condition—I do not know whether the Commission can justify it after they have examined the record—that the Johnstown Fuel and Supply Company is not getting sufficient revenue. Do you question that?

By Mr. Pew: I do not question it.

By the Chairman: Very well. Now, it does not appear at the present time but what your company, as a public service company is getting sufficient revenue.

By Mr. Pew: Well, there is no evidence to show that we are or are not.

By the Chairman: At least it is not in issue, then.

By Mr. Pew: That is right.

By the Chairman: We can go that far.

By Mr. Pew: We can go that far.

[fol. 35a] By the Chairman: Now, you are operating, a business in which you are receiving a fixed sum, substantially fixed, which you derive, of course, by the application of a percentage.

By Mr. Pew: With one exception: We had a minimum, that we were to get twenty-one cents for a certain time and not less than twenty-four and a half cents.

By the Chairman: Yes; I understand that. But whatever the application is, it is a fixed amount. It results in dollars and cents, not a percentage. Now, in order to relieve a company that is a ward of the Commission, in order that it may serve the public, it is in duty bound to serve, that then they must have an increased revenue, and immediately you toll that revenue, or that attempt at an increase, to the extent of seventy per cent. Now, I cannot quite get that through my head as being a proper proposition. It may be, and perhaps you can explain it.

By Mr. Pew: I did not quite catch your thought.

By the Chairman: We find that it is necessary for the Johnstown Fuel Supply Company to have increased revenue. You admit that is absolutely necessary.

By Mr. Pew: Well, from the statements here, yes.

[fol. 36a] By the Chairman: Well, I am taking it from that standpoint. Going through the evidence I might not agree with it.

By Mr. Pew: Pardon me. I do not admit that it is not, because I don't know anything about the value of the property, and have not gone into it. But from the statements made over here I take it for granted that it is true.

By the Chairman: For the purpose of this conference I am assuming it from the same standpoint. In order to give them an increased

revenue we find that we are confronted by a contract which without your supplying them with a dollar's worth more of gas, or a particle more gas, you immediately draw a larger revenue from them, and therefore in effect stand in the way of the relief, which the Commission upon this assumed state of facts would seek to furnish.

By Mr. Pew: Why, Your Honor, these people made a contract in which they agreed at least four years ago to pay us more money for this gas, and we feel that we are entitled to twenty-four and a half cents and not twenty-one cents. Not only that, but the cost of natural gas has trebled since this contract was made. You get right back to the fact that it costs us more to get gas.

By the Chairman: Why don't you impose a larger cost on them without raising their rates?

[fol. 37a] By Mr. Pew: That is a question for this court, I guess, to decide. I am not an attorney. The question is whether or not we can get that. We propose to collect it.

By the Chairman: That is, that increased amount?

By Mr. Pew: Yes, sir. That is our contract.

By the Chairman: But you see the Commission is sitting here in a position in which it is trying to take into consideration not only your rights under the contract, because we realize that we have a duty toward you as well as a duty toward this other company, but still we have the consumers in this territory, who are not a party to your contract, and possibly, as has been suggested by Mr. McCahill, through the administration of the Commission, they may not be bound by that contract. I still cannot see why we ought not to find some way whereby your company could appreciate the position that the consumers are in, where, if you were not furnishing an additional amount of gas, that it may be considered in the way of a—I was almost inclined to say, a burden upon the rate payers—that they would be obliged to raise to a rate that would permit you to take seventy per cent. of each dollar that they paid in.

By Mr. Pew: We will not ask for any percentage of a reasonable readiness-to-serve charge. We would not want to see a readiness-to-

[fol. 38a] serve charge, as you said there, be a charge to cut down our receipts.

By Mr. Gordon: The Johnstown Company proposes to get around that question by having this readiness-to-serve charge, and we are prepared to make some concessions on that.

By the Chairman: Well, gentlemen, is there anything further that you can suggest. I would be very glad to hear it.

By Mr. Pew: I would like to ask Mr. Saylor, as he has told you about our selling gas for thirteen cents, was that in Johnstown?

By Mr. Saylor: Yes.

By Mr. Pew: That is two years ago. Of course, the prices of everything have gone up, some three hundred per cent., since that.

By Mr. Saylor: That I understand was sold for manufacturing purposes, not for domestic consumption. But as to Johnstown wholesalers, you sell the whole business on the minimum sum.

By Mr. Pew: It is the same business. It is the peak load, any

[fol. 39a] way. It does not make any difference whether it is a big load or little. It takes the same use of our lines.

By Mr. McCahill: There is another matter that I think we ought to clear up while we are all here. That is this: At the conference in Pittsburgh recently—a record was not made and the Commission were not advised—statements were made by Mr. Pew that the sale of gas had not been pushed as it should have been by the Johnstown Fuel Supply Company, and that a report had been made by their own people to that effect. At that time Mr. Pew will remember I disputed the statement, because I had been informed otherwise by the Johnstown Fuel Supply Company, and since that time I have had occasion to ask more in detail about it, and with the consent of the Peoples Natural Gas Company and the Johnstown Fuel Supply Company inspectors of the Peoples Natural Gas Company were sent to Johnstown for the purpose of investigating and seeing whether or not fuel—that is, gas—could not be introduced as fuel in furnaces, and they made a report, after investigating several prospective customers, that there were about seventy-two, I think, prospects that could be followed up. I understand from Mr. Morrissey that but forty-three of those upon investigation said that they had never at any time had entertained the idea of using gas for fuel.

Mr. Morrissey: The balance of them asked for the cost, and when they found the cost they refused.

[fol. 40a] By Mr. McCahill: When they found what the cost would be to them, because of the low price of coal, they refused to entertain that. So out of the seventy-two which were reported upon by Mr. Pew's inspectors, there was not a single customer in the whole group.

Mr. Morrissey has furnished me a statement of the various prices of coal, which he has received from a reliable coal company at Altoona and at Johnstown, since the year 1907, and these prices range from $3.25 a ton at Altoona in 1907, to $2.50 in 1910, and in May, 1917, $6.25. That is in Altoona. As against $1.50 a ton in Johnstown in 1907 to 1913, and then running up gradually from $1.66 to $2.90 in May of 1917. I just want the Commission to keep in mind the difference in these prices, which accounts for the large growth of the gas business in Altoona, which Mr. Gordon has spoken of, the Peoples Natural Gas Company having built it up in only four years of time, as against not so much business in Johnstown in a little longer time. At the present time Altoona is paying $6.25 for coal as against $2.90 in Johnstown. That I think accounts for the much larger consumption of gas in Altoona as against Johnstown.

By Mr. Gordon: That is easy to explain, but the average user of natural gas in Johnstown pays in gas bills about $15.50 a year. Am I right, Mr. Morrissey?

By Mr. Morrissey: In the neighborhood of $16.

[fol. 41a] By Mr. Gordon: The average users of the gas over the entire system of the Peoples Natural Gas Company use over $32.00 worth. That is more than one hundred per cent. greater. That seems to be one great trouble in this Johnstown question.

By Mr. McCahill: That is because Johnstown is constantly met

with the price of cheap coal, and that is the reason Johnstown cannot supply gas for furnace purposes.

By Mr. Pew: I would like to say just one thing more, to meet what has been said. I did not want to bring this out. When the present owners—the company that was then in Johnstown sold originally gas—formed a little agency to purchase from the other owners of the Johnstown Fuel Supply Company their property, there was some doubt that the new company would not push the business. They agreed in their contract that they would sell appliances to consumers at cost and do everything they could to push the business. We have not been satisfied that they have not done it. We know they have not done it. As a matter of fact, just shortly after the present owners bought this property they were selling the appliances not at cost, but at a profit. In addition different corporations began to take over the appliances, and some of those are making a profit, and it is not the company trying to get business. Now, we feel that they could increase their business by going out and hustling, and I think the City Solicitor feels the same way. [fol. 42a] By Mr. McCahill: The Johnstown Fuel Supply Company will certainly be very glad to adopt any method that may be made on any one's suggestion.

By Mr. Pew: That is not the attitude we have received from the people in Johnstown.

By Mr. Morrissey: I can give you a little light on that question. I have with me the report of the inspectors that has been mentioned here, and also the report of the solicitation that was made on that. As for pushing the sale of appliances, I believe the stoves are sold cheaper in Johnstown than they are in Altoona, where there are more of them. There have been campaigns to sell them. It is true the company is not conducting the appliance business. We did dispose of that part of our business, because when the gas company is selling appliances it don't have the co-operation of the merchants of the city. They have the antagonism of them. They will take a coal stove instead of a gas stove, because they have got to sell something. Today every establishment in Johnstown that will handle stoves is pushing the sale of gas stoves. There is one company that has sold over one hundred stoves in one week in a sale. At another time they sold fifty in one week in a sale. They give time payments on them. Because we have separated from the appliance business does not say that the public has no opportunity to get this material, or that it is not pushed. Every newspaper every night and every morning carries advertising matter there with a statement of the [fol. 43a] different stoves, and they just follow up the business like a department store follows up its line of goods. We have not only co-operated with them, but we have contributed towards that advertising. So that we are not lying back on our oars, but we are helping along as far as we can.

By the Chairman: Now, gentlemen, I must express my appreciation of your accepting the invitation to come before the Commission. I had hoped that we would be able to come to a conclusion, not the Commission's conclusion but a conclusion which you gentle-

men might arrive at and then suggest to us. It is possible that you will not need to separate so soon but that you may find it advisable to have a conference among yourselves. Should you so do and have any suggestions to bring to me to lay before the Commission I will be very glad to see you at any time during the afternoon, if you find that you reach any conclusions that you would submit to us. The offices of the Commission will be available for your use if you arrange a further conference among yourselves, and anything that Professor Ehlers can do for you he will be available for you, and I know he will place himself at your service.

Adjourned.

I hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the Proceedings before the Commission in the within matter.

Chas. F. Phillips.

[fol. 44a] Before the Public Service Commission of the Commonwealth of Pennsylvania

Complaint Docket, No. 1083

Cambria Steel Company

vs.

Johnstown Fuel Supply Company

In re Alleged Unjust and Unreasonable Increase in Rates for Gas for Industrial Purposes

Louis Franke

vs.

Johnstown Fuel Supply Company

Complaint Docket, No. 1098

In re Alleged Unjust and Unreasonable Increase in Rates for Gas to Both Domestic and Industrial Consumers in the City of Johnstown

Hearing Held Before the Public Service Commission of the Commonwealth of Pennsylvania, in the Senate Caucus Room, Capitol, Harrisburg, Pa., on September 14th, 1917, at 9:30 a. m.

[fol. 45a] Stenographic Report of Proceedings Before the Public Service Commission of the Commonwealth of Pennsylvania

Messrs. Guilbert & Lewis, Stenographers; Reported by H. F. Jolly

Present:

Commissioner Rilling, Presiding.
Berne Evans, Esq., Counsel for Public Service Commission.

Prof. E. H. Ehlers, of the Bureau of Engineering of the Public Service Commission.

E. M. Vale, Esq., Chief of Bureau of Public Convenience.

T. K. Saylor, Esq., J. E. B. Cunningham, Esq., and S. G. Nauman, Esq., for City of Johnstown.

Francis B. Hamilton, Esq., for Cambria Steel Company.

David I. McCahill, Esq., and C. B. Miller, Esq., for Johnstown Fuel Supply Company.

Christy Payne, Esq., and George B. Gordon, Esq., and A. T. C. Gordon, Esq., for Peoples Natural Gas Company.

[fol. 46a] Commissioner Rilling: Are the parties ready to proceed?

By Mr. Cunningham: The complainants are ready.

By Mr. McCahill: The Johnstown Fuel Supply Company is ready.

By Mr. G. B. Gordon: I wish to make application in favor of the Peoples Natural Gas Company, which is the intervenor in these two cases for leave to amend its answer. I have here an amended answer in both of these cases, which I would like to file. There is an order of allowance at the bottom, on each paper. I notice, that the rules of the Commission say that the amendments have to be allowed.

By Commissioner Rilling: The amendments are allowed. You will file them, and furnish a copy to the complainants. As we are not familiar with these cases, may we know who the attorneys for the respective parties are?

By Mr. Cunningham: For the City of Johnstown, Mr. T. K. Saylor, Mr. S. G. Nauman and myself. For the Cambria Steel Company, Mr. F. B. Hamilton.

By Commissioner Rilling: And for the respondents?

[fol. 47a] By Mr. McCahill: For the Johnstown Fuel Supply Company, Mr. C. B. Miller and David I. McCahill. For the Peoples Natural Gas Company, Mr. Christy Payne, Mr. George B. Gordon and Mr. A. T. C. Gordon.

Commissioner Rilling: Are you ready to proceed?

By Mr. Cunningham: Mr. Commissioner, if I understand the situation, the natural gas supplied to the citizens of Johnstown is distributed by the Johnstown Fuel Supply Company, and is brought, as I understand it, to Johnstown by the Peoples Natural Gas Company. The Johnstown Fuel Supply Company had a tariff on file with the Commission. The rate for domestic consumers was 30 cents per thousand cubic feet.

Commissioner Rilling: Net?

By Mr. Cunningham: That is net. About July 15, 1916, the Johnstown Fuel Supply Company filed a new tariff, to become effective on August 15, 1916, and, as I understand it, the principal change in the tariffs, so far as domestic consumers are concerned, was the insertion of a provision for a "Readiness-to-serve" charge, to each consumer, of 50 cents a month, or $6.00 a year. I am speaking now of the complaint in the case of the City of Johnstown.

[fol. 48a] Commissioner Rilling: In addition to the 30 cents per thousand?

By Mr. Cunningham: That would be in addition to the 30 cents a thousand. There was no change in the rate per thousand feet. The increased revenue provided for the company is to be secured through the imposition of this readiness-to-serve charge.

By Commissioner Rilling: Do you mean by that, that any consumer was first obliged to pay this stand-ready-to-serve charge, and then so much a thousand feet, whether he used little or much gas?

By Mr. Cunningham: Yes, it made no difference whether he used any gas so far as the readiness-to-serve charge was concerned.

By Commissioner Rilling: Then there is no discarding of the 30-cent charge? This would not be instead of the 30-cent charge?

By Mr. Cunningham: No; it is a charge to be paid whether there is any gas consumed or not. In fact, the investigation made by the engineers employed by the City of Johnstown, seems to show that, so far as the Johnstown Fuel Supply Company is concerned, that it does need the additional revenue; but the whole difficulty relates to the operating expenses of this company.

[fol. 49a] I have said that the gas is distributed through the city by the Johnstown Fuel Supply Company, but there is a contract between the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, which, later on, was directed by the Commission to intervene as a party in this proceeding. As a result of that contract the Peoples Natural Gas Company gets at least 70% of all the money realized by the Johnstown Fuel Supply Company from the sale of that gas in Johnstown; and that, you will see, makes their operating expense, we think, abnormally high.

Now, I do not know what the effect of this contract is. I do not know whether it is a contract, by which the Peoples Natural Gas Company actually sells the gas to the Johnstown Fuel Supply Company, or whether it is a mere contract for the distribution of the gas, that really belongs to the Peoples Natural Gas Company, through the City of Johnstown, by the Johnstown Fuel Supply Company on a 30 per cent. commission. That contract is one of the things that will have to be dealt with in this case, and I, of course, do not want to be understood as taking any particular position with reference to the proper construction of that contract, until we come to that branch of the case.

Now, that is about the situation, so far as the City of Johnstown is concerned. It protests against the imposition of this readiness-to-serve charge. Mr. Hamilton represents the Cambria Steel Company, and I suppose you will want to hear both cases together.

By Mr. McCahill: We have no objections to that.

[fol. 50a] By Commissioner Rilling: I think we may as well dispose of both cases together.

By Mr. Cunningham: We may add, as to the City of Johnstown, that there is another element in the case; that the Johnstown Fuel Supply Company is operating under an ordinance contract, granted to one of its predecessors, in which it is provided that in no event shall the price of gas to the consumers exceed 35 cents per thousand cubic feet. We propose to show that this readiness-to-serve charge, added to the 30 cents per thousand cubic feet, makes the

consumer pay more than is provided for in that ordinance. Mr. Hamilton represents the Cambria Steel Company.

By Commissioner Rilling: Do you wish to say anything, Mr. Hamilton?

By Mr. Hamilton: The situation of the Cambria Steel Company is this: The Cambria Steel Company is engaged in the manufacture of steel, and in 1910 it made a contract with the Peoples Natural Gas Company for a supply of natural gas, to be used in the furnaces of certain departments, at a rate of 13 cents per thousand cubic feet. At the same time there was a tariff filed, raising the rates to domestic consumers in the City of Johnstown—a tariff was filed, raising the rates for industrial service, from 13 cents to 18 cents, and imposing at the same time a readiness-to-serve charge upon the industrial consumers.

[fol. 51a] At that time the Cambria Steel Company, within 30 days of the filing of this tariff, filed its protest against the increasing of rates, so that, so far as the position of the Cambria Steel Company is concerned, we take the position that the burden of showing that this increase is justified, is upon the Peoples Natural Gas Company of Johnstown.

By Commissioner Rilling: Was the complaint of the City of Johnstown filed before the effective date?

By Mr. Cunningham: No, it was not filed until after the tariff had become effective.

By Mr. McCahill: Mr. Saylor has asked us to agree that we will proceed in the same way as if the complaint had been filed within the time, and to that we make no objection. We will be glad to go along and try that case on the same ground that the Cambria Steel Company case will be tried on.

In addition to the statement of Mr. Hamilton, with reference to the Cambria Steel Company contract, the Johnstown Fuel Supply Company is also furnishing industrial companies, such as the Lorraine Steel Company, under the special contract which was entered into between the Johnstown Fuel Supply Company, and approved by the Peoples Natural Gas Company, as it was required to be approved, and also the contract between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company. The Lorraine [fol. 52a] Steel Company has always paid more for its gas to the Johnstown Fuel Supply Company, than the Cambria Steel Company has paid.

In the contract between the Cambria Steel Company and the Johnstown Fuel Supply Company there is a special provision, by which the Johnstown Fuel Supply Company, can, upon thirty days' notice, increase the cost of gas to the Cambria Steel Company. That thirty days' notice was given to them about the time the rates and tariffs were filed with the Public Service Commission. The increase which has been made in the price of gas to the Cambria Steel Company, puts the Cambria Steel Company in exactly the same position, so far as the cost of gas is concerned, as the Lorraine Steel Company was for some time previous to that.

We have no hesitancy in saying that the reason for the increase

in the price of gas to the Cambria Steel Company was because the company, the Johnstown Fuel Supply Company, has not been making a reasonable return on all of its business; and, besides, it was necessary to do that in order to avoid a charge of discrimination in favor of the Cambria Steel Company as against the Lorraine Steel Company. One of two things had to be done, and that is, either the charges to the Lorraine Steel Company had to be lowered, or the charges to the Cambria Steel Company had to be raised, and the Johnstown Fuel Supply Company took steps, as they were required to take, under the terms of the contract.

Mr. Hamilton mentions that they also placed a readiness-to-serve charge on the Cambria Steel Company, which, of course, is only $6.00 a year to any company, and that is insignificant here. We [fol. 53a] presume that the reason that was done so that all customers in Johnstown would be placed on the same basis.

By Commissioner Rilling: Do I understand that the Johnstown Fuel Supply Company assumes the burden of the reasonableness of the increase?

By Mr. McCahill: A number of engineering conferences have been had between the city of Johnstown, through their engineers, and the engineers of the Johnstown Fuel Supply Company, and I understand they have agreed approximately upon the inventory and appraisal of the physical properties. I, therefore, assume they are ready to give the real facts on that question.

By Mr. Saylor: I think that is correct.

By Mr. Cunningham: I think that can be worked out.

By Mr. McCahill: Therefore, we do not have any objections to their getting testimony to prove the operating expenses, and all other matters incident to the company's supplying these different companies.

Mr. Cunningham mentioned a contract between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company, which was a contract entered into in 1909, before the present owners of the Johnstown Fuel Supply Company were operating that company. [fol. 54a] That contract was in existence before the Commission was authorized by law, or took office, and we have no quarrel with that contract. It is a contract which, I assume, was entered into, in good faith, and under the terms of which the Johnstown Fuel Supply Company is obliged to pay, in order to secure gas for the Peoples Natural Gas Company, 70% of the gross receipts from the sale of gas The Johnstown Fuel Supply Company, in order to receive more net revenue to itself, decided upon a customer's charge. We believe, under the terms of the contract, we are not obliged to split the customer's charge, 30% and 70% with the Peoples Natural Gas Company. If it should be held, then we are obliged to split the customer's charge with the Peoples Natural Gas Company. In the past we have paid considerably more than 50% of the customer's charge. The same is true of any increase which the Johnstown Fuel Supply Company get by trying to make them pay an increase in the cost of gas per thousand cubic feet. Every increase which we get would only return 30% to the Johnstown Fuel Supply Company and 70% to

the Peoples Natural Gas Company; and, therefore, in order to get the amount of revenue demanded, the Johnstown Fuel Supply Company is obliged to make—they would have to increase the cost of gas per thousand cubic feet, to considerably more than the people, or that the traffic in Johnstown would bear. In fact, it is not possible.

By Commissioner Rilling: Has the result of the engineering con- [fol. 55a] ference been given to the Commission? Has it been put in evidence?

By Mr. Cunningham: No, it has not. There is nothing before the Commission yet.

By Commissioner Rilling: Then, so far as the complainants, and the Johnstown Fuel Supply Company are concerned, we will proceed with the testimony, to ascertain the fair value of its plant, in order to raise the reasonableness of these rates.

By Mr. McCahill: That is correct.

By Commissioner Rilling: Now, what is the attitude, or the position, so far as the Peoples Natural Gas Company is concerned.

By Mr. McCahill: I would like to say another word, and that is that what we have got, it is immaterial to us, what kind of a schedule is allowed to the Johnstown Fuel Supply Company what we need is revenue. If there is any better way, and if the revenue can be raised—if the Commission has any ideas on that, or the city of Johnstown, or the Peoples Natural Gas Company, have a better plan, than the one we have suggested, we would be glad to adopt it. What we need is revenue. We have adopted the only method we knew of, or could see, in which this revenue could be secured.

By Commissioner Rilling: Does not that necessarily involve the reasonableness of the 70 per cent. given to the other company?

[fol. 56a] By Mr. McCahill: Mr. Cunningham and Mr. Saylor contend that it does. I think that it is a question that will have to be determined by the Commission.

By Mr. G. B. Gordon: The position of the Peoples Natural Gas Company in this controversy is that it has nothing whatever to do with it, and that it was improperly cited to become a party to this proceeding.

The controversy here is the controversy between the city of Johnstown, on behalf, I suppose, of the users of natural gas in Johnstown and the Cambria Steel Company, which is a user of gas in Johnstown, and the Johnstown Fuel Supply Company, which is a public service corporation, holding itself out to supply, and actually supplying the citizens of Johnstown *of* natural gas. The question, we take it, that is involved in this case, is whether the tariff which is filed by that company, is a reasonable tariff or not. The question is whether the people of Johnstown are or are not being charged an exorbitant and unjust rate for natural gas.

The answer is more in the nature of a demurrer, or, perhaps, an answer setting up jurisdictional facts, because, from the standpoint of strictly legal pleadings, it is not a demurrer, because it sets up some facts which are not in the record. The position of the corporation is that it is simply a private contractor, as regards the fuel supplied to the Fuel Company of Johnstown, which is a public service company.

It simply furnishes that company with that which it supplies to the [fol. 57a] public, under a private contract between the two companies.

By Commissioner Rilling: Is it to be your atittude that the Peoples Company is a public service company?

By Mr. G. B. Gordon: Not a public service company as to its business there. Of course, the Peoples Company, where it holds itself out to be furnishing gas to the public in those districts and those places that they mention, it is a public service company.

By Commissioner Rilling: Has it not filed its schedule of rates with this Commission?

By Mr. G. B. Gordon: Certainly, but no schedule relating to such business as they have there.

By Commissioner Rilling: The schedule does not include this 70 per cent. rate?

By Mr. G. B. Gordon: No, and it does not hold itself out as being in the business of supplying other natural gas companies with gas. It simply supplies this particular public service corporation with gas, under a contract, which is practically a private contract, between them. It is exactly in the same position as if their contract was [fol. 58a] with a gas well driller, or a coal company for coal. That is our first position.

Our second position is analagous to that, and that is that this gas which we furnish, is very largely produced in the State of West Virginia, and it is simply transported by us, in a pipe line, from the State of West Virginia to the State of Pennsylvania, and delivered to the Johnstown Fuel Supply Company, and sold to them at the State line, and that we are simply, as to that business, we are engaged in interstate commerce, and that with our relationship in that regard, we are without the jurisdiction of the Commission. So that, the two questions that we raise here are questions which go to the jurisdiction of the Commission. In the first place, that we are not acting in connection with this case, in any capacity for the public service whatever. In the second place, that, insofar as we have had to do anything, it is interstate commerce, and, therefore, not within the jurisdiction of this Commission.

I might say, in partial answer to some of the things that have been said here, by the other counsel, that we do not regard the question before the Commission as being one of whether this Johnstown Company can make money—that question is only incidental. If they are not able to supply gas at a reasonable rate, to customers, and make money, that loss is theirs. In other words it is not part of the duty of this Commission to try and make them make money. The question of their rates comes down, necessarily, to a question of the reasonableness of the rates.

By Commissioner Rilling: In determining that fact, whether or [fol. 59a] not the proposed rates are reasonable, by the Commission, are they to start out with the assumption that the company must pay the 70 cents, or whether that 70 cents is a reasonable rate or not?

By Mr. G. B. Gordon: I do not think that question is involved in the proceedings, except incidentally. Let me illustrate it in this way: That it is the common practice, by persons who protest against

the rates of a public corporation, to attempt to show that the rate is unreasonable by showing that the company makes too much money. That is one way. Of course, if they can convince the Commission that the rate proposed is such, we will say, as to give the corporation 25 per cent and the Commission only thinks that the public service corporation in that case should make 10 per cent then they have proved that the rate is unreasonable. But that is only one way in which the rate can be proved to be unreasonable.

It does not follow that because a corporation may be able to show that they cannot make more than 3%, that, therefore the rate is not an unreasonable rate. The rate may be a reasonable rate, itself, and yet the company may be over-capitalized. The company have no proper source of supply, and there may be a great many reasons, but, nevertheless, the company can only charge such reasonable price, per se, for the service which it renders.

I want to say in behalf of the people in the Natural Gas Company, here, that it is a fact that we do not care anything at all for this business, and we do not care anything about this contract. We would [fol. 60a] sooner stop and go away. The only reason that we continue to supply gas in Johnstown for 70% of the receipts, which is less than we can obtain for the gas elsewhere, is because we have the gas, and do not want to cut Johnstown off from the supply of natural gas. I think this however, is irrelevant, and does not have anything to do with this case, but, in view of something that has been said, I want to say, that I wish the Commission to understand that the attitude and the position of our company is that we are not proper parties to this case, and that the Commission has no jurisdiction to fix the price, and particularly to fix the price in any case, and particularly in this proceeding, where nobody has complained against us—to fix the price for which we are to sell gas to the Johnstown Fuel Supply Company: In other words, to put it briefly, and in conclusion, that this business in which we are engaged, is not a public service. It is a mere private matter. The Commission cannot make an order that we must furnish them gas. If the Commission cannot make an order that we must furnish gas, then the Commission cannot fix the price at which it will be furnished. Beyond that, what we are doing, is interstate commerce, and any order that the Commission may make in this case, would be an undue interference with interstate commerce.

By Commissioner Rilling: The Peoples Natural Gas Company is a Pennsylvania corporation?

By Mr. G. B. Gordon: It is a Pennsylvania corporation, incorporated under the Natural Gas Act.

[fol. 61a] By Commissioner Rilling: Is the contract between you and the Johnstown Company in evidence?

By Mr. G. B. Gordon: Nothing is in evidence. This is the first hearing the first formal hearing that there has ever been in the case.

By Mr. McCahill: Mr. Hamilton said that the price of gas is increased by the Johnstown Fuel Supply Company, to the Cambria Steel Company, from 13 cents to 18 cents. That is not complained of

here. That increase is not complained of, from 13 cents to 18 cents, but for the charge of 14 cents to 18 cents.

By Commissioner Rilling: You may proceed with the testimony.

By Mr. Cunningham: I suppose the order of proof is immaterial, and that I may as well put in the formal matters for the complainants. As I understand it, all the schedules filed by the respondent companies, the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, are in evidence.

By Commissioner Rilling: They may be considered as in evidence. [fol. 62a] By Mr. Cunningham: May it please the Commission, the City of Johnstown now offers in evidence the special ordinance, No. 706, Select Bill No. 677, being an ordinance granting unto United Fuel Gas Company, and its successors and assigns, the right to lay and operate and maintain lines of pipe in the streets and highways in the City of Johnstown, Cambria County, Pennsylvania, for the purpose of supplying natural gas for fuel and lighting purposes to the public, and providing the terms and conditions under which the said franchise shall be exercised; this ordinance having been passed finally in councils on March 23, 1906, and approved March 26, 1906. I also offer in evidence, in connection therewith, the acceptance of the terms of this ordinance by the United Fuel & Gas Company, dated April 23, 1906.

(Received and marked as the City of Johnstown's Exhibit J-1.)

By Mr. Cunningham: The City of Johnstown also offers in evidence especially, what is known as Section 9 of the ordinance, which reads as follows:

"The charge for natural gas, supplied as aforesaid by the United Fuel Gas Company, its successors and assigns, during the continuance of this franchise, shall not exceed thirty-five cents per thousand cubic feet; and the said United Fuel Gas Company, its successors, and assigns, shall make no charge directly or indirectly to its consumers within the said City, for meters or for the installing of meters; and upon breach of any of which conditions this ordinance shall ipso [fol. 63a] facto become null and void and all the rights and privileges thereunder immediately cease and determine and the mains, pipes, connections, appliances and property generally of the said United Fuel Gas Company, its successors and assigns, in the streets alleys and highways of the said city shall become the property of the said city or its successors."

By Mr. Cunningham: The attention of the Commission is also respectfully directed to the provisions of Section 1 of the ordinance, reading as follows:

"That the right and privilege be and the same is hereby granted unto the United Fuel Gas Company, a corporation, its successors and assigns, to lay, operate and maintain lines of pipe in the streets, alleys and highways of the City of Johnstown, for the purpose of supplying natural gas for fuel and lighting purposes to the public, for the term of thirty years beginning at the date of the acceptance

of this ordinance by the said company, and ending thirty years thereafter; upon the following conditions and restrictions."

By Mr. Cunningham: Now, Mr. McCahill, may we stipulate on the record that this ordinance granted originally to the United Fuel Gas Company, has been duly assigned to the Johnstown Fuel Supply Company, and is the ordinance under which the present respondent company is operating now in the City of Johnstown.

By Mr. McCahill: I agree to that.

[fol. 64a] By Mr. Cunningham: If the Commission please, the City of Johnstown offers in evidence its Exhibit J-2, being a certified copy of the certificate of incorporation of the Peoples Natural Gas Company.

By Mr. G. B. Gordon: That is objected to as being irrelevant.

By Commissioner Rilling: Let it be admitted. The objection is overruled.

(Said paper is received and marked as the City of Johnstown's Exhibit J-2.)

By Mr. G. B. Gordon: It is considered that all documents that may be offered, will be subject to be checked up, and that any errors discovered afterwards, may be called to the attention of the Commission.

By Commissioner Rilling: Is that agreeable?

By Mr. Cunningham: Yes, sir.

By Mr. McCahill: That is agreed to.

By Mr. Cunningham: The City of Johnstown offers in evidence Exhibit No. J-3, being a copy of the contract, under date of August [fol. 65a] 12, 1909, between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company, being the contract referred to in the pleadings in this case.

By Mr. G. B. Gordon: That is objected to as incompetent and irrelevant.

By Commissioner Rilling: Subject to the objection, it will be admitted in evidence.

(Received in evidence and marked City of Johnstown's Exhibit J-3.)

By Mr. Cunningham: The City of Johnstown offers in evidence Exhibit No. J-4, being a certified copy of the certificate of incorporation of the Johnstown Fuel Company.

(Said paper is received in evidence and marked City of Johnstown's Exhibit J-4.)

By Mr. Hamilton: The Cambria Steel Company offers in evidence Exhibit C-1, the agreement bearing date the first day of April, 1913, between the Johnstown Fuel Company and the Cambria Steel Company, for the supply of gas to its Bessemer, Blooming Mill, and Cambria Open Hearth Plant, and Smithshop, and the rates therein set forth apply especially in the case of the Cambria Steel Company against the Johnstown Fuel Supply Company.

[fols. 66a-73a] By Mr. Cunningham: The City of Johnstown calls Mr. Morrissey, the general manager of the respondent, the Johnstown Fuel Supply Company, as if on cross-examination.

TESTIMONY OF P. J. MORRISSEY

P. J. MORRISSEY, having been duly sworn, was examined and testified as follows:

By Mr. Cunningham:

Q. Mr. Morrissey, what is your connection with the Johnstown Fuel Supply Company?
A. I am General Manager.

[fol. 74a] TESTIMONY OF JOHN G. PEW

JOHN G. PEW, having been duly sworn, was examined and testified as follows:

By Mr. Cunningham:

Q. Mr. Pew, I understand you are the president of the Peoples Natural Gas Company?
A. I am.
Q. How long have you been its president?
A. About two years.
Q. It is, as we already know, a Pennsylvania corporation?
A. It is.
Q. In what business is it engaged?
A. Well, it is engaged in the business of producing, purchasing, transporting and distributing natural gas, and selling natural gas wholesale.
Q. Where are its wells located?
A. Its wells are in Greene, Washington, Allegheny, Armstrong, Indiana, and Clarion Counties.
Q. All in Pennsylvania?
A. Those are all in Pennsylvania; all the counties are.
[fol. 75a] Q. Has it wells in West Virginia, too?
A. It has not.
Q. Any in Virginia?
A. It has not.
Q. Where do you get your supply of gas?
A. We produce about one-third of our gas; not quite a third; and purchase about two-thirds, from West Virginia.
Q. The one-third that you speak of as being produced, is produced from the wells in the counties which you have referred to in your testimony?

A. Yes, sir, and in that one-third we purchase a small amount.

Q. In Pennsylvania?

A. In Pennsylvania; yes, sir.

Q. From other producers?

A. From other producers.

Q. You purchase about two-thirds of your supply? From where do you buy it?

A. In West Virginia, at the West Virginia State line, by meter measurement.

Q. From whom do you buy it?

A. The Hope Natural Gas Company.

Q. Is the Hope Natural Gas Company controlled or operated by the same people as the Peoples Natural Gas Company?

A. It is owned by the same interests as the Peoples Natural Gas Company.

Q. And it owns producing wells in West Virginia?

A. It owns a great many producing wells in West Virginia.

Q. Now, when you get this gas gathered into your pipe lines, from [fol. 76a] your own wells in Pennsylvania, and the amount purchased by meter, at the State line of West Virginia, what do you do with the gas?

A. To answer that exactly, we sell it to domestic consumers, manufacturing consumers, and wholesale it to the Johnstown Fuel Supply Company.

Q. Do you furnish domestic consumers in Pittsburgh?

A. We do.

Q. Quite a number—a large number I assume?

A. Oh, we supply part of Pittsburgh, and Wilkinsburg, and Greensburg, and Latrobe, and Altoona, and other towns.

Q. You have spoken of going out along the Main Line there, as far as Greensburg. Do you supply domestic consumers in any places between Greensburg and Altoona?

A. I mentioned Latrobe.

Q. Latrobe, and any other places?

A. There are some towns along there, but I have forgotten their names.

Q. Cresson?

A. We supply Cresson, yes, sir, but that is on this side of Johnstown.

Q. Do you supply Gallitzin if you recall?

A. Yes, I think we do.

Q. Do I understand that your pipe line runs along the Main Line of the Pennsylvania Railroad Company, from Latrobe on and up past Johnstown, and to Gallitzen and Cresson, and on through to Altoona?

A. It is not along the main line, but it has a separate route. We [fol. 77a] have branches off to the different towns. It is parallel.

Q. In the same general direction?

A. It parallels it, to a certain extent; yes, sir.

Q. Now, as you approach the city of Johnstown, where is your line located, the main line?

A. The main line runs north of the city of Johnstown.

Q. It runs on the north side of the main line of the Pennsylvania Railroad?

A. No, it crosses the Pennsylvania Railroad, on the other side of Johnstown, some place or the other. It is on the south side of the Pennsylvania Railroad at Derry, and then it crosses there, between there and Johnstown.

Q. That is, it is located, we may say, I suppose, we may say, right below Morrellville?

A. It is below Morrellville; yes, sir.

Q. Have you a branch from that main line, through which you conduct the gas you have to distribute in Johnstown?

A. About the middle of our line extends a branch up to the outskirts of Johnstown; that is, to the city line.

Q. To the city line?

A. Yes, sir.

Q. And there you dispose of a certain quantity of gas to the Johnstown Fuel Supply Company, do you?

A. Yes, sir.

Q. And you dispose of that under the contract that has been offered in evidence here, I suppose?

[fol. 78a] A. I did not see the contract, but I judge so; yes, sir. I will answer that, "Yes."

Q. How far is it from your main line, from the main line of your company, tell us Mr. Pew, to the point of the city line, at which you deliver gas to the Johnstown Fuel Company?

A. What is the question?

Q. Can you tell us about how far it is from the main line, along this branch line, to the point at which you deliver this gas to the city of Johnstown?

A. I would say that may be probably a mile, or two miles back. I do not know the exact distance. Something like that.

Q. Your company has filed tariffs of rates, by which it supplies gas to domestic consumers, have you?

A. Yes, sir.

Q. That is, you have tariffs for these towns you have mentioned, like parts of Pittsburgh, and Wilkinsburg, and Greensburg, and Latrobe, and Cresson, and Altoona? Wherever you supply to domestic consumers, as you call them, you have filed your tariffs?

A. Yes, sir.

Q. But you have filed no tariffs, for the sale, or whatever it is, of this gas to the Johnstown Fuel Supply Company at Johnstown?

A. We have not.

Q. That is what you call the wholesale distribution of gas? Is that what you mean by your testimony?

A. That is what we term it a minute ago, yes, sir.

Q. So that in your own mind, in your testimony, it was divided, [fol. 79a] your business, into those classes you have mentioned, domestic consumption, industrial consumption, and wholesale consumption?

A. Or other companies. Probably we carry it on our books as

"Other companies." I think we carry that on our books as "Other companies."

Q. As business transacted with another company?

A. Yes, sir.

Q. As gas disposed to another company?

A. Yes, sir.

Q. So in general, you describe that as a wholesale business?

A. Well, I do in this answer; yes, sir.

Q. Well, I only wanted to understand your testimony; that is all.

A. Yes, sir.

Q. Well, of course, you have filed tariffs for what you describe as industrial consumption, where you sell it to large industrial plants, and so on, you have a tariff?

A. They are filed.

Q. Filed for those sales?

A. Yes, sir.

Q. Let me ask you how the amount of gas which you furnish to the Johnstown Fuel Supply Company compares with the quantity which you furnish to large industrial consumers?

A. Well, in Johnstown, the amount we supply to the Johnstown Fuel Supply Company would, of course, be larger than some industrial consumers, and smaller than others.

Q. Then you have some industrial consumers, as I understand [fol. 80a] you, that take a larger quantity of that gas than you supply to the Johnstown Fuel Supply Company?

A. Yes, sir.

By Commissioner Rilling.

Q. Can you name those?

A. Yes, I can name some of them, just off-hand. I cannot name them all, possibly. We sell gas to the Pittsburgh Steel Company. They use more gas than the Johnstown Fuel Supply Company. We sell gas to the Crucible Steel Company. I think those two in particular. Those contracts were made with them, and they can be shut off at a moment's notice, to take care of the domestic business, and are shut off in the wintertime.

By Mr. McCahill:

Q. Do you know approximately that consumption, each one of those?

A. Well, the Pittsburgh Steel Company when running full, will take ten or twelve million feet a day. The Crucible Steel Company will take five or six million a day.

By Mr. Evans:

Q. What does the Johnstown Fuel Supply Company take, on an average?

A. I will have to—I think I can tell you that from the memo-

randum I have made. I would not want to say it off-hand. (Consulting paper.) No, I cannot. I will have to estimate it.

Q. Very well.

[fol. 81a] A. They will probably use seven million feet a day, on summer days, and a little less than that in the wintertime. They probably will run about seven or eight million feet a day. Their amounts vary according to the weather.

By Mr. McCahill:

Q. Does that include the industrials?

A. That includes the domestic, only.

Q. Would it not include the industrials of Johnstown?

A. When the industrials are on, I would say that would add four to five million a day. That varies by the day. I can only answer that in a general way, for we have got a monthly statement, and not a daily statement, which I see.

By Mr. Cunningham:

Q. Mr. Pew, to what other companies do you supply the gas in the same way that you supply to the Johnstown Fuel Supply Company?

A. We do not supply gas to any other company in the same way.

Q. Well, then, do I understand——

A. We do sell some gas to the United Natural Gas Company in Clarion County, that is, from the field, but we do not transport that gas at all. I mean, it is right from our wells. Then, occasionally, if one or two of the other companies, such as the Philadelphia Company, have a bad break, and we can supply them, we have sold a little gas temporarily, and they would do the same thing for us. It is a working arrangement with them.

Q. I do not refer to those temporary arrangements. I want to in-[fol. 82a] quire if there are any other companies, than the Johnstown Fuel Supply Company, in Pennsylvania, with which you have contracts to supply gas, along the same lines, and the same general terms, as to the Johnstown Fuel Supply Company?

A. No, no other company.

Q. Well, then, is that supply, when you come to the Johnstown Fuel Supply Company, is that the only supply you give in Pennsylvania, for which you have no filed tariffs?

A. Well, we do not have to file tariffs for those companies. We are selling to the United Natural Gas Company in the fields, and we do not have to file tariffs, or for this arrangement we have with Philadelphia, to help them out temporarily. Outside of them, I would say "Yes."

By Commissioner Rilling:

Q. To what extent do you sell gas to the United Natural Gas Company in Clarion?

A. They take in the wintertime about, probably as high as

6,000,000 feet in a day, and in the summertime two or three million feet a day. That is from the field line. It is not from our main system.

Cross-examination by Mr. McCahill:

Q. Mr. Pew, just where does the pipe line from West Virginia into Pennsylvania cross, at the State Line?

A. At a little town called Brake, about 17 miles south of Waynesburg, at the State Line.

[fol. 83a] Q. Do you have more than one pipe line?

A. We have two; a 20-inch, and a 12-inch.

Q. And they both cross at that point?

A. Well, a number of lines cross there. There are three lines crossing there, and one two miles north.

Q. Where does it go to from there, the pipe line?

A. The two main lines go direct to Pittsburgh.

Q. By way of what places?

A. They go through near Greensburg, and cross into Monongahela City, and back of McKeesport, and on through Turtle Creek, into Wilkinsburg, and from there into Pittsburgh, and divided up into units. There is a branch line goes out near McKeesport, that runs over to Jeannette, and from there to Greensburg, and Latrobe, and Johnstown, and on to Altoona.

Q. Now, as the pipe line goes through Greene and Washington Counties, I believe you said you produced gas for yourself in those counties?

A. Yes, in Greene and Washington.

Q. Is the gas which you produce—then your own wells feed into those same pipes?

A. Yes.

Q. As it comes there?

A. Yes.

Q. That same thing is true as it crosses into Fayette County?

A. I did not mention Fayette County.

Q. Does the pipe line run through Fayette County?

A. We may possibly have one, and one back to Belle Vernon that reaches into Fayette.

Q. Any gas produced at that point is fed into this pipe?

A. Yes. While we supply Belle Vernon and Monessen with [fol. 84a] 99% of their gas from these main lines, there is an amount that goes right into the corner of Fayette and Westmoreland Counties there, that we feed into the system, that Monessen and Belle Vernon uses, but it is so little that it is hardly worth mentioning.

Q. As your line comes into Allegheny County, the wells that you have producing your own gas in Allegheny County, are fed into this line and carried into Pittsburgh?

A. Yes, and there are other lines run into Pittsburgh, too, and go on down to Wilkinsburg, but the gas would not travel back through the large line into——

Q. That is, you mean to say it would not travel back of the point where the branch line——

A. Well, that can——

Q. Where the branch line runs up from McKeesport and goes back to Jeannette.

A. No, it would not travel that way.

Q. There would be no Allegheny County gas that would go back of that point?

A. No Allegheny County gas would be in that point. It would travel——

Q. Do you have any gas wells in Westmoreland County?

A. Yes.

Q. And some around Derry?

A. Yes, and some of them we are still taking gas from, and have been for thirty years.

Q. Those are large producing wells?

A. No, they are what you might call "Strippers."

Q. Were you with the Peoples Natural Gas Company when the line was built to Johnstown?

[fol. 85a] A. Yes, sir.

Q. What year was that?

A. I do not remember exactly. In 1907 or 1908, or some place in there.

Q. And what is the first point on this side of Johnstown which you are now supplying—east of Johnstown, I would say?

A. I do not know just in what rotation those little towns do come, but I should judge it was Gallitzin.

Q. What I want to get at is when it ran its lines east of Johnstown. How long after it was built into Johnstown was it extended east of Johnstown?

A. Oh, about three or four years.

Q. In other words, it stopped at Johnstown for three or four years?

A. Yes, for three or four years.

Q. And it would be in 1910 or 1911 that it was extended east of Johnstown?

A. About that time. I have no objection to giving you the exact date, but I do not carry it; that is all. It may be in 1912 or 1913.

Q. But, that time your line stopped at Johnstown?

A. Yes, sir.

By Mr. Gordon:

Q. Mr. Pew, is there any stock ownership, or any connection of any kind, between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company?

A. There is not.

Q. They are absolutely independent companies?

A. Absolutely independent companies.

[fol. 86a] Q. And, as I understand it, the Johnstown Fuel Supply Company is the only public service corporation that you supply that gas to? I mean, the only natural gas company in Pennsylvania

that your company is supplying to, except this northwestern concern that you speak of?

A. The United Natural Gas Company, in Clarion County.

Q. That you supply from your wells, and not from your transportation pipe line system?

A. Yes. And it covers times when you may serve some company, like the Philadelphia Company, or the Equitable Company, or some other company that gets tied up through an emergency, when they have some break, or something of that kind?

A. Yes, sir.

Q. And you have never filed any tariffs relating to that kind of business?

A. We never have.

Q. The tariffs of course, speaking of those here, as they are being referred to here, they fix a charge for domestic consumption in the various municipalities where you furnish gas to the public?

A. And also——

Q. They do that?

A. Yes, sir, they do.

Q. And they specify the different rates, for the different municipalities, as they are set forth in those schedules?

A. Yes, that is so.

Q. And in the same way, they specify the rates for manufacturing and industrial purposes?

A. Yes, sir.

[fol. 87a] Q. In those same municipalities?

A. Yes, sir.

Q. Subject, as you say, to being shut off at any time when the company needs the gas for domestic consumption?

A. Yes, sir.

By Mr. McCahill:

Q. Where does that gas from Armstrong County feed into this pipe line; at what point?

A. Part of our gas from Armstrong County comes from there and gets into the line there by the way of Blairsville, and into the system at Derry. Part of it comes through a line from Armstrong County down through New Kensington, and the little villages along the road, and goes into Wilkinsburg, and there mingles with the West Virginia gas, and the Greene County gas.

Q. Do you get any gas from Butler County?

A. Not a foot. We have no lines into Butler County, or property in Butler County.

Q. You have gas that you secure in Westmoreland County. Where does that feed into this line?

A. Part of it goes by a line through to Jeannette, and helps to take care of Jeannette and Greensburg, and the balance of it goes by the line into Pittsburgh, from Armstrong County, and goes into the general system; but I would say, off-hand, that not a foot of the Westmoreland gas now is able to reach this main line, for Greensburg takes it all, and a litle more—considerably more.

Q. Is there any connection, then, between the pipe line taking [fol. 88a] gas out of Westmoreland County with the pipe lines that reach Johnstown?

A. Yes.

Q. Where is that connection made?

A. We have two connections; one in Jeannette for an emergency, where the gate is closed; and one in Greensburg, when the emergency gate is closed. If the lines ever go out on any system we are able to at least partially take care of part of it, and swing the gas in other directions.

By Commissioner Rilling:

Q. You spoke of wells in Indiana and Clarion Counties. Have you pipe lines from those two counties.

A. We have pipe lines from those two counties.

Q. Where are they?

A. That comes through Armstrong County, and follows the Armstrong County gas wherever it goes.

Q. What is the size of those two main pipes leading up from West Virginia?

A. One is a 12-inch, and one is a 20-inch.

By Mr. G. B. Gordon:

Q. The question was asked, Mr. Pew, a' out your relationship as between the Peoples Company and the Hope Company.

A. Yes.

Q. Does the Peoples Natural Gas Company own any stock in the Hope Gas Company?

A. They do not.

[fol. 89a] Q. Does the Hope Company own any stock in the Peoples Company?

A. They do not.

Q. Those two companies are entirely separate and independent?

A. Yes, sir.

Q. What you meant to say was that the stock ownership of both companies is vested in the same interests?

A. I believe that was the question, really. That was really the question, as I understand it.

Q. But there is no interlocking stock ownership between the two companies themselves?

A. There is not; no, sir.

Redirect examination by Mr. Cunningham:

Q. Mr. Pew, Mr. Gordon asked you about the relations between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company, and I understood you to answer and say that they were entirely separate and distinct?

A. They are.

Q. The interests controlling these companies are different and separate and distinct in every way?

A. And always have been.

Q. Had you knowledge of the making of this agreement that is in evidence here, as to the City of Johnstown's Exhibit No. J-3, being the contract of 1909 between your company and the Johnstown Company?

A. If I remember right, without looking at that, I signed one side [fol. 90a] of it as vice president. I am not sure about it. Yes, I know all about that contract. You asked me just how long I have been president of the company. I was with the company a great many more years in other positions.

Q. Mr. Pew, what, if anything, did you know at that time of the Citizens Light, Heat & Power Company, referred to in this contract, and the reference made to a proposed consolidation, or something of that kind, between the Johnstown Fuel Supply Company, and the Citizens Light, Heat & Power Company?

A. Well, anything I knew would only be of a general knowledge. I could not make any definite statements. What I mean is, hearsay.

Q. Well, was that Citizens Company a company engaged in supplying any kind of gas in Johnstown at that time?

A. Yes, they were supplying artificial gas, as I was informed.

Q. And one of the purposes then in view was to effect some sort of a consolidation, so far as it could legally be done, between these two companies, was it not? I mean Johnstown companies?

A. Well, so far as we are concerned, we had nothing to do with that.

Q. I know, but it is referred to extensively in the contract, is it not?

A. Yes.

Q. I say, between the contracting parties, that was one of the things in view, was it not, that there was to be a consolidation, and that the furnishing of artificial gas was to cut out, just as much as possible, and the consumers supplied with natural gas, so that that was one of the purposes in making the contract?

[fol. 91a] A. I do not know whether I will make it quite that strong. The contract speaks for itself.

Q. It does.

A. The idea was, you know, and anyone would know that if there was a supply of natural gas in a town, at from 30 to 35 cents a thousand, that the consumer of artificial gas would take the natural gas rather than the artificial, and you naturally knew they would do that.

Q. Mr. Pew, did you know of the United Fuel Gas Company, the company to which the ordinance in evidence here was originally granted?

A. I knew of them. I knew them. I knew who they were.

Q. Now, this present contract in 1909 seems to follow and supplement the former contract?

A. Yes, sir.

Q. Were you familiar with the former contract referred to here,

dated December 31, 1906, with George W. Crawford, Carrol E. Crawford, M. C. Treat and John W. Donnan, of Washington?

A. I think I signed the other side of that contract too. I am not sure of that. I was familiar with it.

Q. What connection, if any, did any of these people you have mentioned, the Messrs. Crawfords and Mr. Treat and Mr. Donnin, have with the Peoples Natural Gas Company?

A. They had no connection at all, whatever, in any shape at all.

Q. So that from the inception, this was a contract between the parties, without any identity of these interests, was it?

A. Yes, sir. As a matter of fact those people intended to lay their [fol. 92a] own line from West Virginia, when they got that ordinance. I just happened to know that, and that they decided it was rather expensive, and they came to our company, and talked with our directors on the question of making the contract, and after they had the ordinance and had accepted it.

Q. The ordinance then—and I am only trying to get this on the record—seems to have granted to the United Fuel Gas Company, and it passed through the hands of these gentlemen you have mentioned, to the Johnstown Fuel Supply Company?

A. Well, those gentlemen you have mentioned were the United Fuel and Gas Company.

Q. They were the people that incorporated the United Fuel Company?

A. They were the people that incorporated it and owned it.

Q. And owned it?

A. Yes, sir.

Q. Do you know whether these gentlemen I have mentioned owned any stock of the Peoples Company? Were they interested then as stockholders?

A. They were not interested, even as stockholders.

Q. Mr. Pew, have you any recollection, in the building of your line to Johnstown, of the exercise by your company of its right of eminent domain, to condemn a right-of-way for a pipe line, over the land of Mr. B. F. Garvey, in Lower Yoder Township?

A. I do not recollect it. It may be true, too.

Q. Well, will you look at that transcript and record? (Handing paper to witness.) That may be something that will refresh your [fol. 93a] recollection. I wanted to inquire about the circumstances under which that condemnation proceeding was had.

A. It shows here that I signed it as vice president.

Q What was the occasion for condemning this strip of land for that pipe line? That is, where were you going with the pipe line at that time? The map may help you, that is attached to that paper.

A. We were probably laying this line to Johnstown.

Q. Yes; and that is your best recollection, is it?

A. Well, there is no question about it.

Q. And the purpose was to put your company in position to furnish gas to the Johnstown Fuel Supply Company?

A. Yes.

By Mr. G. B. Gordon: I object to that as irrelevant.

A. (Continuing:) And a few towns along the road. We also supply some towns between Johnstown and Latrobe.

By Commissioner Rilling: Subject to the objection, let the evidence be admitted.

By Mr. Cunningham:

Q. This particular piece of land, then, is just outside of Johnstown, is it not?

A. That, I could not say, off-hand, without seeing the general map, but it may be.

[fol. 94a] By Mr. Cunningham: The City of Johnstown offers in evidence Exhibit No. J-5, being a record of condemnation proceedings by the Peoples Natural Gas Company, for a pipe line over the lands of B. F. Garvey, in Lower Yoder Township, being No. 375, June Term, 1907, in the Court of Common Pleas of Cambria County.

By Mr. G. B. Gordon: That is objected to as incompetent and irrelevant.

By Commissioner Rilling: It may be admitted subject to the objection.

(Said paper is received and marked City of Johnstown's Exhibit No. J-5.)

Recross-examination.

By Mr. McCahill:

Q. Do you know the output of the wells in Armstrong, Clarion and Indiana Counties?

A. We do not keep that separate. Anything I gave you would probably be an estimate.

Q. Well, give me an estimate of it. What is your daily output, I mean?

A. Oh, about 12,000,000 feet; from 12,000,000 to 15,000,000 feet.

Q. From 12,000,000 to 15,000,000 feet?

A. Yes, sir.

[fol. 95a] Q. What amount of gas, would you estimate, comes to the City of Johnstown, that comes from the West Virginia fields?

A. I would say that at least 75% of the gas comes from the West Virginia fields.

Q. Is it distributed at Johnstown?

A. Yes, sir.

Q. And what becomes of this 12,000,000 feet?

A. There are two 12-inch lines from Armstrong County, and from our Valley Station that goes direct through New Kensington, into Pittsburgh, and into Wilkinsburg. And the other line that we have there is a small 8-inch line that supplies Blairsville, and D[illegible]ry, and part of it gets into this other line; and I would say, only as an

estimate, for it all goes into one pot, that 75% of the gas that goes to Johnstown at least, comes from the West Virginia lines.

Q. What per cent. of the gas that is distributed in Pittsburgh comes from the West Virginia fields?

A. Well, nearly the same; 66⅔% of all our gas comes from the West Virginia fields; that would be, two-thirds of the gas we sell, from the West Virginia fields.

Q. What per cent. then of the gas coming from the West Virginia fields branches off at your branch line that runs on through McKeesport to Jeannette?

A. Well, I would say that 75% of our gas that was delivered by Johnstown and Altoona lines, I would say, comes from the West Virginia fields.

Q. And you say that about 66⅔% of that gas you sell in Pittsburgh comes from West Virginia?

A. Nearly that; not quite that.

[fol. 96a] Q. And the other one-third you have sold in Pittsburgh comes from through Armstrong County and down there?

A. And Westmoreland County or Indiana County. Indiana County does not amount to anything. We have some three wells left there, and are still on the ground.

Q. And from Washington and Greene Counties?

A. And from Washington and Greene Counties.

Q. That makes up the other one-third for Pittsburgh?

A. Yes, approximately.

Q. Is there at least a percentage of the gas that you develop in Washington and Greene Counties that also goes to Johnstown by way of this branch line?

A. We do not develop very much in any one of those.

Q. Then when it gets on out to—when this gas from Westmoreland County meets the branch line from Indiana County——

A. I would say there is not a foot of gas, unless in an emergency, line is out, that goes from Westmoreland County into that line.

Q. I am speaking of the 8-inch line from Westmoreland, Armstrong and Clarion and Indiana Counties, that empties into this main line.

A. Yes, sir.

Q. That adds to the gas which you have brought in from Washington and Greene Counties?

A. Yes.

Q. And to your gas which you get in West Virginia?

A. Yes, it all adds together.

[fol. 97a] Q. And you would still say——

A. That about 75% of the gas comes from that lower line, and about 25% comes from this lower line.

Q. In other words, there is more West Virginia gas delivered to Johnstown than there is to Pittsburgh?

A. Yes, because at Pittsburgh we have different lines coming in from the old fields. We have an old line in from Murrayville, and an old line in from the old Milltown field, and from Armstrong and Clarion; and a large 12-inch line that carries more gas than the

8-inch line; and then we have some gas coming into the mill neighborhood, into the Pittsburgh district, to such places as Midland, and Woodlawn, and down the Beaver Valley. We have gas in that neighborhood. Of the entire amount of gas that the Peoples Company sells from year to year they will buy approximately, two-thirds and produce about, in Pennsylvania, the other one-third. That has been about the case for the last four years.

Q. Why you apportion 75% of it to Johnstown?

A. I am giving that, in my estimate, from the size of the lines going to the different places. We have an 8-inch going into Derry.

By Mr. Gordon:

Q. I want to ask you a little more about this line that feeds this Johnstown district. That begins at Derry, does it not?

A. Well, that particular line begins at Derry, but there are three lines coming into Derry, and there is a pump station at Derry, that takes it out of those lines, and forces it along the road.

[fol. 98a] Q. Do you have a pump station at Derry?

A. Yes, sir.

Q. It is necessary, in order to transport this gas, in order to get it to Johnstown? If there is no pressure, you will have to pump it?

A. We have our pump at Brabe, I think, at the State Line, and we have our pumping station at Derry. We do not run that pump in real warm summer days, but it is running today, and it runs all winter. There are a couple of pumps there, and we run them, according to the demands.

Q. You have a 12-inch line that begins at Derry?

A. Yes, sir.

Q. And extends through the Conemaugh Valley?

A. Yes, sir.

Q. How far does that 12-inch line go?

A. That 12-inch line runs to the station on this line—clear to the line of the City of Johnstown, and one branch of that line goes into Altoona.

Q. What is the size of the line that goes into Altoona?

A. Fourteen inches.

Q. Fourteen inches?

A. Yes, sir.

Q. Then this 12-inch line from Derry to this point near Johnstown?

A. Yes, sir.

Q. And then this 14-inch line from there on to Altoona?

A. Yes, sir.

Q. And that is the present eastern terminus of this main line?

A. Yes, sir.

[fol. 99a] Q. Now, the line from that line serves, going east, I take it, the following places that are named in your schedule of rates—that is, New Florence?

A. Yes, sir.

Q. And New Florence is between Derry and Johnstown?

A. Yes, New Florence is between Derry and Johnstown; yes, sir.
Q. Between Derry and Johnstown?
A. Yes, sir.
Q. And does it serve Portage and Summit?
A. And it serves Ligonier, east of Derry.
Q. East of Derry?
A. Yes, sir.
Q. That is, between Derry and Johnstown?
A. Yes, sir.
Q. And it supplies east of Johnstown, and Loretto, Portage and Cresson and Summit and Altoona?
A. Yes, sir; but Summit and Cresson are all one, as I understand them.
Q. Well, I notice they are different municipalities?
A. They are different municipalities, but they are really all one town.
Q. They are different municipalities, mentioned in your schedule of rates?
A. Yes, sir.
Q. And Juniata?
A. Yes, sir.
Q. At all those towns you supply gas to the public?
A. We do.
Q. At the published rates filed with this Commission?
A. We do.
[fol. 100a] Q. And this right-of-way that you condemned from this man Garvey, which has been referred to in the evidence, is the right-of-way which is used by this main line which supplies all these places, as well as Johnstown?
A. I believe the gas goes through that same line, and supplies all these places.
Q. And it is on the line that is used exclusively to supply the Johnstown Fuel Supply Company?
A. Not now, it is not; no, sir.
Q. But at the time of the condemnation it was the line which could be then and is now, used to supply New Florence and Ligonier?
A. While I cannot say positively where this new farm is, I think this farm is east of those connections, going to those towns.
Q. East of the connections going to New Florence and Ligonier?
A. East of that; and it would not necessarily need that particular condemnation for those two towns.
Q. This was the entire line that was made at that time from Derry to Johnstown?
A. Yes, sir.
Q. For the corporate uses and purposes of the company?
A. Yes, sir.

By Mr. Cunningham: Mr. Saylor says this condemnation proceeding—that the land is just on the edge of Johnstown.
By Mr. G. B. Gordon: On this main line?

[fol. 101a] By Mr. Saylor: It is on this branch line, and a part of the main line.

By Mr. G. B. Gordon: This condemnation proceeding does not seem to say anything but about one line, the main line.

By Mr. Saylor: I think Mr. —— knows whether or not they condemned for a branch line; but Mr. Garvey owns all the ground around there, and I judge that both the main line and the branch line were on the Garvey land.

By the Witness: I do not think we went through there. I think it was south.

By Mr. G. B. Gordon: But in this condemnation it was for a main line condemnation. It shows that on its face.

By Mr. McCahill:

Q. Mr. Pew, when you constructed your line beyond Johnstown towards Altoona, when was that?

A. Well, I have already answered that; about 1912 or 1913; I am not sure.

Q. And this condemnation was in 1905 or 1906?

A. It was in 1907.

[fol. 102a] Q. So that this condemnation was not used for your extension into Altoona, but was used to reach Johnstown?

A. At that time.

By Mr. G. B. Gordon: I object to that. It is also used for the extension into Altoona.

By Mr. McCahill: I say, at the time the condemnation was instituted.

By Mr. McCahill:

Q. When did you first acquire a distributing line into Altoona?

A. We built a distributing line into Altoona in 1912 or 1913.

Q. Did you own any distributing lines in Altoona at the time this condemnation proceeding was had?

A. No.

Q. Did you own any distributing lines east of Johnstown at the time this condemnation proceeding was held?

A. No.

Q. It has all been acquired since?

A. Yes, sir.

By Mr. Gordon:

Q. This line now is a part of your service through to Cresson and Altoona?

A. Yes, sir.

[fols. 103a–162a] Q. You cannot serve Cresson and Altoona without using this piece of pipe that extends over the Garvey farm?

A. No, I do not believe we could.

Q. You have no other way to get to Altoona, except through that pipe?

A. No, sir.

By Mr. McCahill:

Q. I would like to ask whether or not that this piece of ground is to the west of the point where your line branches off to go to Altoona, the branch of the line that goes straight to Altoona?

A. I am under the impression that we branch off on this very farm, but I would not say for sure.

Q. I would like to get it on the record, with the right to correct it later on.

A. I say, I am under the impression that we branch off on this very farm. I would not say for sure.

Q. Would you say you branched off before you reach this piece of land that is described in that condemnation proceeding, or that you go through there?

A. I would say on this piece or into this piece, as you express it, but I am not sure about that statement.

By Mr. McCahill: I would like permission to have the record of that, and to be corrected later if susceptible of correction.

By the Witness: We could easily tell you that. If I knew that I would tell you. Our general map will show it.

[fol. 163a] Continuation of Evidence on Behalf of the Complainants

TESTIMONY OF J. R. CRISSEY

J. R. CRISSEY, having been duly sworn, was examined and testified as follows:

By Mr. Cunningham:

Q. Where do you reside?

A. Johnstown, Pa.

Q. You are the city engineer of the City of Johnstown?

A. Yes, sir.

Q. At the former hearing in this case the City of Johnstown offered in evidence its exhibit known as Exhibit J-5, being certified exemplification of the proceedings at No. 375, June Term, 1907, in the Court of Common Pleas of Cambria County, relative to the condemnation by the Peoples Natural Gas Company of a right-of-way for a pipe line across the land of B. F. Garvey. I now direct your attention to a blue print, identified as City of Johnstown Exhibit No. J-8, and ask you whether the tracing from which this blue print was made was made under your direction as City Engineer, and what it shows.

A. The tracing from which this blue print was made was made under my direction as City Engineer and shows a 12-inch gas line of the Peoples Natural Gas Company from the Johnstown City line [fol. 164a] to the branch line to Altoona, in relation to the B. F. Garvey farm.

Q. Where is the B. F. Garvey farm with relation to the City line of Johnstown?

A. It lies in a southwesterly direction, about 1,400 feet southwest.

Q. Have you indicated the Garvey farm in green outline on the blue print?

A. I have.

Q. How is the pipe line indicated on the blue print?

A. In red.

Q. Where is the place at which the pipe line of the Peoples Natural Gas Company branches from the line to Johnstown to the City of Altoona?

A. It is about 3,470 feet southwest of the southwestern extremity of the B. F. Garvey farm.

Q. Then, the Garvey farm, if I understand you, is traversed by that part of the Peoples Natural Gas Company's pipe line which goes to the City of Johnstown?

A. Yes, sir.

Q. And this farm lies between the City of Johnstown and the place where the pipe line branches to go to the City of Altoona?

A. Yes, sir.

Q. Do you know about when these respective parts of the plant of the Peoples Natural Gas Company were laid?

A. About 1907 the main line to Johnstown, and about 1914 to Altoona, the branch-off to Altoona.

Q. Are they both 14-inch lines?

[fol. 165a] A. No. The line to Johnstown is a 12-inch line. The branch line to Altoona is a 14-inch line.

Q. And the line coming up to this point where the branch goes off to Johnstown and one to Altoona is what size?

A. A 12-inch line.

Cross-examination by Mr. McCahill:

Q. The pipe line across the Garvey farm is not used at all by the Peoples Natural Gas Company in their line from Pittsburgh to Altoona, is it?

A. No.

Q. Only in their line from Pittsburgh to Johnstown?

A. Pittsburgh to Johnstown, yes, sir.

Q. And they could have built a line from Pittsburgh to Altoona without in any way condemning this particular piece of land?

A. Yes, sir.

By Mr. A. T. C. Gordon:

Q. Does this plan show the junction point between the lines of the Peoples Natural Gas Company and the Johnstown Fuel Supply Company?

A. Yes, sir.

Q. Where is that with reference to the city line?

A. The orifice meter station is about 500 feet southwest of the

city line, and the reducing station is just 87 feet further southwest. It is between the Garvey farm and the city line.

[fols. 166a-186a] Q. It is not within the limits of the city?

A. No.

Q. You also said, I believe, that the line to Altoona was laid in the year 1914. It was before that time, was it not?

A. On or about 1914. I don't know just exactly the date.

Q. Wasn't it in fact in 1912 and in the early part of 1913?

A. I could not testify positively on that particular.

Q. You are not quite sure?

A. I am not just positive when the line was started to Altoona, but to the best of my knowledge it was about 1914. It may have been 1913.

By Mr. Cunningham: We offer in evidence Exhibit J-8, identified by the witness as the plan of the Garvey farm and pipe lines, and so forth.

By Mr. A. T. C. Gordon: That is objected to as incompetent and irrelevant.

By Commissioner Rilling: Subject to objection it may be admitted.

(The plan is marked "City of Johnstown Exhibit No. J-8, September 24, 1917, C. F. P.")

[fol. 187a] ARGUMENT OF COUNSEL

By Mr. Cunningham: We offer in evidence especially the rates and tariffs filed by the Peoples Natural Gas Company with the Commission, effective January 22nd, 1917, and respectfully direct the attention of the Commission to the fact that under these tariffs the Peoples Natural Gas Company supplies domestic and special consumers and distributes the gas to them in the Boroughs of Avamore, Blairsville, East McKeesport, Edgewood, Fayette City, Greensburg, Jeannette, Latrobe, Monesson, Pittsburgh, Swissvale, Turtle Creek and Wilkinsburg at the rate of 30 cents per thousand cubic feet of gas, less two and a half cents for prompt payment; that it distributes gas consumers in Arnold and New Kensington Boroughs at 27 cents, less two cents for prompt payment; that it distributes its product in Bolivar, Ligonier and New Florence at 32 cents, less 2 cents for prompt payment; and that it distributes in Altoona, Cresson and Portage, and other places between Johnstown and Altoona, at 27 cents less two cents for prompt payment.

This is offered for the purpose of supporting our charge made in our supplemental complaint that the rates charged in Johnstown are discriminatory, and offered in connection with the evidence already in tending to show that the consumers in Johnstown will have to pay more than thirty-five cents per thousand cubic feet under these new tariffs.

By Mr. A. T. C. Gordon: This is objected to as incompetent and irrelevant.

[fol. 188a] By Commissioner Rilling: These rates are on file with the Commission at the present time?

By Mr. Cunningham: Yes. We are only directing attention to the particular parts of the scedule.

By Commissioner Rilling: Subject to the objection they may be admitted. They do not, as I understand, provide any rates or specify any rates for gas furnished to Johnstown?

By Mr. Cunningham: No. The testimony is directly to the contrary, that they have not filed any tariff for that service. The tariffs to which I refer are tariffs where they distribute gas to the consumer in those various boroughs and cities.

City of Johnstown rests.

[fol. 189a] By Mr. McCahill: The respondent, the Johnstown Fuel Supply Company for the purposes of the record, moves that the complaint be dismissed, because the burden of proof of proving the allegations of the complaint, while ordinarily upon the city in a measure have been assumed by the Johnstown Fuel Supply Company, we believe there is nothing before the Commission at this time which would in any way show that the rates which the Johnstown Fuel Supply Company have filed are unjust, unreasonable or excessive. The only other question raised by the complaint is the question of whether or not the rates and charges as filed will violate the city ordinance of the City of Johnstown. That would leave us a legal question to be determined by the Commission, with the assistance of their law department. Therefore, we believe that the complaint at this stage of the proceedings has not been sustained, and for that reason, for the purposes of the record, I make the motion that the complaint be dismissed, both as to the Cambria Steel Company and the City of Johnstown, by its Mayor, against the Johnstown Fuel Supply Company.

By Mr. A. T. C. Gordon: In behalf of the Peoples Natural Gas Company, who have intervened at the request of the Commission, I make a motion that the complaint be dismissed as against that company, it not appearing from the evidence that they are in any wise connected with this controversy.

[fol. 190a] By Mr. Cunningham: I desire, of course, to direct the Commission's attention to the fact that since the last hearing there has been a supplemental complaint filed making the Peoples Natural Gas Company a party, and alleging that these two companies are jointly serving the City of Johnstown. So far as the Peoples Natural Gas Company is concerned, there is a charge in the supplemental complaint that they are engaged in a public service company business, and have filed no tariffs at all, as required by law, for this service rendered at Johnstown. That is proven in the testimony. So that it seems to me it is idle to talk about dismissing the complaint against the Peoples Company, when the evidence shows that they have not filed any tariff at all for Johnstown, and especially when the

evidence shows that they are actually distributing gas farther away from their source to supply in Altoona, and so on, at a less rate than the people of Johnstown will have to pay by reason of the combination, as we allege it, between these two companies.

So far as the Johnstown Fuel Supply Company is concerned, they are the people that have filed the tariffs, and they filed an increased rate, and I understood when we started out that Mr. McCahill's position was that he would handle the case in the same wise as though our complaint had been filed during the 30-day period, the Cambria Steel Company's complaint having been filed during that period. But regardless of that we show that they are paying seventy [fol. 191a] per cent of all the money they receive from the sale of natural gas to the Peoples Natural Gas Company, and then putting on this additional ready-to-serve charge, and even if we had the burden of showing that the rates were unreasonable I submit we have shown it amply here by showing the joint service that is being rendered by these companies, and the manner in which they are rendering it.

So I submit that the burden in both of these cases is on the respondent companies.

By Mr. McCahill: Mr. Saylor has asked me, for the purpose of keeping the record straight, to make it clear in my motion that although the complaint of the city was not filed within the thirty days we do not claim any advantage because of that fact, and are proceeding on the same theory as if it had been filed within thirty days. A part of my motion was to the effect that I thought the testimony at this time established the fact that they were not unjust and unreasonable. My thought, without at all trying to get out from under the burden of proof, is that at this stage of the proceeding it seems to me the record shows the rates are not unjust and unreasonable.

By Commissioner Rilling: Let us see if we understand the facts. Were these two complaints originally filed at the same time?

[fol. 192a] By Mr. Cunningham: The Cambria Steel Company's complaint was filed first.

By Commissioner Rilling: When was the schedule for these increased rates filed?

By Mr. McCahill: It became effective on August 15th, 1916.

By Commissioner Rilling: And the complaint of the Cambria Steel Company was filed within the thirty days?

By Mr. Cunningham: Yes.

By Commissioner Rilling: And in that complaint it is alleged, as we recall it, that they are in violation of a contract, and also unreasonable and discriminatory.

By Mr. Cunningham: Unreasonable.

By Mr. Saylor: The rates being unreasonable and discriminatory and unjust.

By Commissioner Rilling: That would, of course, throw the burden on the respondent of proving that they were reasonable.

[fol. 193a] By Mr. McCahill: Yes.

By Commissioner Rilling: The [illegible]led its complaint after the

effective date, in which it only alleged that they were in violation of a contract, and then at our suggestion filed an amended complaint alleging unreasonable rates.

By Mr. Cunningham: In and of itself.

By Mr. McCahill: I understand, however, that within the thirty day period the Mayor of the City of Johnstown wrote a letter to the Commission protesting, and later on filed a formal protest. The Johnstown Fuel Supply Company is willing to consider that formal protest as having been filed about the same time the letter was.

By Commissioner Rilling: Then, I understanding the two complaints may be disposed of the same as if they had both been filed before the effective date?

By Mr. McCahill: Yes; I think so.

By Commissioner Rilling: Now your motion is to dismiss them because there is no evidence to sustain them?

[fol. 194a] By Mr. McCahill: No. Rather because the evidence at this point shows affirmatively the respondent's case.

By Commissioner Rilling: Do you mean the Commission will have to consider that evidence as it is, as it has been submitted, whether or not it makes out a case?

By Mr. Cahill: Yes. The purpose of my motion was for the purposes of the record, so that when the Commission has considered the testimony down this far, if they are satisfied at that point that the rates of the respondent are not unjust, unreasonable and discriminatory, that then at that point you can decide the case in favor of the Johnstown Fuel Supply Company because of a motion which was made at this time.

By Commissioner Rilling: I do not quite get your thought. As I understand, the valuation made by the engineering conference has been put in evidence here of the value of the Johnstown Fuel Supply Company and the rates.

By Mr. Cunningham: The conference has agreed on certain things, not on all that Mr. Gannett testified to, but there is a report of an engineering conference, as I understand it, filed with the Commission, covering certain features of the valuation

[fol. 195a] By Mr. McCahill: Yes; on an estimated original cost of physical property value. The point I am making—we do not object to going ahead at all, but the point I am making is that that agreed original cost, even as testified to by Mr. Gannett, will support the increased revenue which we are asking by these rates.

By Mr. Cunningham: If your operating expenses were correct. That is our reply to all that. Of course, there are some figures here that show that this company needs more money if it is going to be permitted to pay out seventy per cent of its income for gas, which amounts, I think Mr. Gannett said, to approximately eighty per cent of their gross receipts, paid over to another company. If they are to be permitted to do that, then they will have to have more money. Our contention is that that is all wrong, and that that is what the Commission will stop. But the real difficulty here is with operating expenses of the respondent.

By Commissioner Rilling: What is your thought, Mr. McCahill,

as to the result or the effect of this arrangement between your company and the Peoples Company in so far as the rendering of this public service is concerned?

By Mr. McCahill: My thought on that is this, and we have so stated in our supplemental answer to their supplemental complaint, [fol. 196a] that this contract was entered into in 1909, and at a time when there was no other source of supply for Johnstown. At the present time there is no other source of supply for Johnstown. The contract was entered into between the parties, and we have no information and are not in a position to say whether or not the rate of 21 cents is reasonable or unreasonable, and not being possessed of the knowledge of the costs of the service to us we are not in a position to come before this Commission and say that that contract should be set aside. We submit that whole matter to the consideration of the Commission. We believe that the people of Johnstown are entitled to service. We believe that if that contract had not been made at the time it was made they probably would not have had service up to this time, except from the artificial plant. On the other hand, we do not want to be in the position of saying that that contract ought to be set aside at this time unless the Commission is satisfied that the rates and charges which the Peoples Natural Gas Company are making to the Johnstown Fuel Supply Company are unjust and unreasonable, and, as I said before, we are not in possession of any facts on that subject which would guide us in saying whether they are or are not. The Johnstown Fuel Supply Company has always taken the position, and I hope it always will, that it is not up to their company to repudiate contracts, whether the contract is favorable or unfavorable. It stands before the Commission in that position today. It seems to me the question of whether or not the rate of 21 cents is just and reasonable [fol. 197a] is a question for the Commission to decide after investigating such facts relative to that 21 cents as they might think are pertinent.

By Mr. Cunningham: I, of course, do not undertake at this time to take a definite position with reference to the construction of this contract. It is a beautiful piece of literature, and I want to give considerable time on it to try and understand all of its various implications, and so on. But there are several things that are so clear in this case that no one can shut his eyes to their effect. The Peoples Company is getting 21 cents a thousand now, and it is demanding 24½ cents under this contract, and I feel that it is the duty of the Commission, in view of the present state of the pleadings, to investigate the reasonableness of the charge that is being made by the Peoples Company to the Johnstown Fuel Supply Company, if you reach the conclusion that that is a bona fide sale by the Peoples Company to the Johnstown Company. Now, I do not concede that for a moment. It seems to me that this is simply a joint service rendered by these two companies, and that you will have to take into consideration in the final determination of this case the value of the property for rate making purposes of both of these companies. That is about the only way that I see to get at it. Certainly the

burden is not on the complainant as against the Peoples Natural Gas Company, because we show them rendering a service here for which they have filed no schedule at all, which is a plain violation, [fol. 198a] if they be held by the Commission to be a public service company, of the Public Service Company Law. Speaking for myself, I can see no reason at all why they should not be held to be a public service company, incorporated under the laws of Pennsylvania for the purpose of rendering a public service, under an act that provides that the business for which they are incorporated to engage is a public business, which is expressed, I think, in one case as affiliated with the public interests. But there are plenty of decisions to the effect—and, in fact, the act itself specifically says that it is a public business in which they are to engage, and then exercising their rights under that act of assembly they come in under the power of eminent domain and condemn land for the purpose of getting a pipe line over to the City of Johnstown. Now, I submit that it is idle for them to suggest to this Commission that they are not a public service company, under the Public Service Company Law. That being the case, as it seems to me, you have got two public service companies before you. You have got to take into consideration the proper rates for this joint service, because I submit that that is about what it is in legal effect. It won't do to say that because the valuation placed upon the plant, the property, or the estimate, if you please, of the amount of investment, upon which the Johnstown Fuel Supply Company is entitled to get a return, because the figures that we have put in evidence show that they have been running at a deficit, that they need more money than they are getting, and the reason they need it is because they are giving eighty per cent. of [fol. 199a] their total receipts to the other company. Whoever heard of a public service company being permitted to get away with operating expenses in which they spend eighty per cent. of their gross receipts for operating expenses? That is practically what it amounts to.

By Mr. A. T. C. Gordon: It comes back to this old question we thrashed out last time, that so far as this new tariff is concerned, against which this complaint is filed, and so far as the price that the Peoples Natural Gas Company is getting for the gas, there is no increase in the price of gas to the Peoples Natural Gas Company. That is, the price remains at 30 cents, as it formerly stood, and the only change is this readiness-to-serve charge. Now, we come back to the old question, whether the Peoples Natural Gas Company is or is not entitled to a portion of that readiness-to-serve charge. That brings us back to the question of the interpretation of the contract.

By Commissioner Rilling: That you think is not for the Commission.

By Mr. A. T. C. Gordon: I think that is not for the Commission. So far in this case we only have the fact that the Johnstown Fuel Supply Company is paying 21 cents for their gas, the same price they paid under the old tariff, and no increase in that expense at all.

Our position is as we outlined it the other day, that so far as this particular instance is concerned we are not engaged in a public serv-

[fol. 200a] ice, and further, That we are engaged in inter-State commerce, and that this Commission has no jurisdiction over the Peoples Natural Gas Company. But you can easily see that so far as this new tariff is concerned the Peoples Natural Gas Company is apparently not getting any increase in actual price for their gas. It remains 21 cents, as it was under the old tariff, and there is no evidence to show that that price is excessive.

By Mr. Cunningham: May I be permitted just to add a word? That contract shows, as we contend, that the Peoples Company has the power to dictate and control the rates to be charged by the Johnstown Fuel Supply Company. The contract expressly provides for that, that the rates shall be put up to 35 cents a thousand at a certain time, and the testimony in this case shows that the Peoples Natural Gas Company claims that that should have been done, and that under the contract the Johnstown Fuel Supply Company can never fix any rate that will net the Peoples Company less than 24½ cents, and the Peoples Natural Gas Company is claiming that 24½ cents. As I recall Mr. Pew's statement, he said he was not prepared whether to say they were going to claim seventy per cent. of the money produced by this readiness-to-serve charge or not, but it is a fair assumption that they will claim every penny they are entitled to under that contract, and there is some language in it that might justify that claim. The point of it all is this: The Peoples [fol. 201a] Natural Gas Company proposes to get more money out of Johnstown, and is claiming more money out of Johnstown now than at the rate of 21 cents a thousand, and they are claiming that without having put a single additional dollar into their investment. There is no question about the claim of 24½ cents per thousand cubic feet. Why should the Peoples Natural Gas Company get anything in addition to 21 cents a thousand? That is the effect, it seems to me, of this whole thing. This tariff was filed by the Johnstown Company, and its effect, if approved by the Commission, will be to give the Peoples Natural Gas Company additional revenue, although it has not done anything to receive a single additional dollar. That is one of the complications of the thing, as it appeals to me at least.

By Commissioner Rilling: This case raises some novel questions, and what we say is our first impressions from the little time we have had to consider them.

A public service company is required to perform the functions for which it is incorporated, serve the public, and if it can earn the revenue it is entitled to a fair return for its service over and above its operating expenses, and a proper sum for depreciation, on the fair value of its property.

This complaint is filed by the Mayor of the City of Johnstown on behalf of the public therein, and the Cambria Steel Company on its behalf, and we think we must view this contract as a complaint of the public. This public service in the supplying of gas to the [fol. 202a] public in the City of Johnstown should be served to them under reasonable rules and regulations that may be prescribed by the company, and we think, from the viewpoint of the public, that

the reasonableness of this rate must be determined as one service rendered by one person.

The two respondents here are two separate public service companies, incorporated as such. We do not think that they can, by making any contractual relations among themselves, divest themselves of or relieve themselves from rendering their public service, and we think they are parties here, one as the distributing agent of the other. What the effect of this contract between them is we are not prepared, and we do not think we are called upon at this time, to determine. But we think that this service on the part of the public and on the part of the companies serving it should be considered as one service, and whether it is reasonable or discriminatory or not can only be determined after taking into consideration all of the facts in the producing of this gas, whether it is produced locally in Pennsylvania or outside. The question of interstate commerce is a matter now pending before the Commission, which will be determined in possibly another case before long. For the purposes of this motion I do not think we need concern ourselves about that at this time.

We think it is upon these two respondent companies at this time, under the status of this case, to assume the burden and prove the [fols. 203a–495a] reasonableness of this increase. Therefore, the motion is dismissed.

[fol. 496a] Colloquy Between Court and Counsel

(Said document is received in evidence and marked Johnstown Fuel Supply Company's Exhibit K.)

By Mr. McCahill: We rest our case.

By Mr. Gordon: The Peoples Natural Gas Company offers in evidence paper marked Exhibit 2 for identification, being a certified copy of the deed of right-of-way from B. F. Garvey and wife to Peoples Natural Gas Company, for a pipe line over the Garvey property. It is dated November 13, 1908, and recorded in the Recorder's Office of Cambria County, in Deed Book, Volume 215, page 573.

By Mr. Cunningham: What is the purpose of this?

By Mr. Gordon: The purpose is to show the title to the right-of-way in the Peoples Natural Gas Company, for the pipe line from the main Altoona line, to the City of Johnstown, and it has a bearing on the evidence offered by the City of Johnstown in reference to the condemnation proceeding in regard to the McGarvey property.

By Commissioner Rilling: It will be admitted.

By Mr. Cunningham: I do not yet see the bearing of this offer.

[fol. 497a] By Mr. Gordon: This deed shows the condemnation proceeding was discontinued, and this grant of right-of-way substituted in its place. This is dated November 13, 1908.

By Mr. Cunningham: We would like to enter objection to the deed as being incompetent, irrelevant and immaterial unless it shows that it was made prior to the construction of the line.

By Commissioner Rilling: Your objection to this evidence may be noted, and the offer will be admitted.

(Said paper is received and marked Peoples Natural Gas Company's Exhibit 2.)

By Mr. Gordon: The Peoples Natural Gas Company rests its case, if your Honor please.

By Mr. Cunningham: We have no rebuttal, your Honor.

By Mr. McCahill: As the record shows, this case was started by reason of the filing of a new tariff, effective August 15, 1916. Most utility companies, in fact, all utility companies, that I know of, when they file a rate or tariff which is an increase, they immediately proceed to collect the increase, as soon as the thirty day period has elapsed. If there is a contest as to whether or not such a rate is just [fol. 498a] and reasonable, and where the matter is heard before the Public Service Commission, usually the public utility company issues receipts to the consumers for the payments which they are making as set forth in the tariff, which is protested, so that in case of a reversal, or in case the filed tariff is not sustained upon examination, the consumer has the money returned to him.

The Johnstown Fuel Supply Company has been better natured in that respect, than any utility company that I know of. That is, we will not attempt to collect it until this matter has been disposed of by the Public Service Commission. So that when we agreed to do that, it was in expectation that the matter would be disposed of immediately, and not with the thought at that time that there would be injected into the case, the fundamental legal question such as that raised by the Peoples Natural Gas Company, as to whether or not the Public Service Commission has any jurisdiction over the service which they are furnishing the Johnstown Fuel Supply Company, and which in turn is being furnished by the Johnstown Fuel Supply to the City of Johnstown.

It looks to me now, that the questions which are presented to this Commission for determination in this case cannot be disposed of inside of a year; and I assume that upon either of the questions that have been raised here, that either one side or the other will appeal the case to the courts, first to the Superior Court, and perhaps to the Supreme Court, in order to get a final decision upon the fundamental [fol. 499a] questions which have been raised by the Peoples Natural Gas Company.

I believe, as I view the Public Service Company Law, that the Johnstown Fuel Supply Company would have a right, on the 15th of August, 1916, to begin the collection of their rates set forth in their tariff. I do not know of any jurisdiction in the Public Service Commission which would authorize the Commission to issue a restraining order against such right, pending the determination of the fact whether or not the right is a just and reasonable right.

As I understand the law, the burden of proof depends on whether or not the protest is filed within the thirty day period, but, as I view it, the rate is still in effect, and the collections were made under that rate.

Mr. Morrissey in his testimony, this morning tells us that from 30 to 40 of the consumers leave the town every month. Now, that means that loss to the company in that readiness-to-serve charge, and if the Commission should decide that the Johnstown Fuel Supply Company were entitled to the rate which they have filed, there is absolutely no way for the Johnstown Fuel Supply Company to reimburse itself for this permanent loss, because these consumers have left town.

The testimony of the witness for the City of Johnstown, Mr. Gannett, shows on its face that the Johnstown Fuel Supply Company is entitled to more money. Mr. Gannett would not say how much more, but his figures conclusively show to the Commission that we [fol. 500a] are entitled to more money. As I say, we are suffering a permanent loss by reason of the postponement of the collection of that amount.

Therefore, I would like to make a motion, to be heard before the full Commission, if your Honor decides or sees fit, that a part of this readiness to serve charge be approved by this Honorable Commission immediately, so that the Johnstown Fuel Supply Company will not have to suffer this permanent loss; without prejudice, however, to the right of the Johnstown Fuel Supply Company to the full amount of the readiness-to-serve charge, as set forth in its tariff, filed and effective on August 15th, 1916.

I believe the record, as it stands today, would convince this Commission upon even a mere cursory examination of the records, that the Johnstown Fuel Supply Company must have immediate relief, if it is to continue in its business of serving the public.

I would like the opportunity of appearing before the full Commission at a very early day, to argue this fundamental question which is of such vital importance to the Johnstown Fuel Supply Company, and that is whether or not, on the basis of Mr. Gannett's testimony, we are not entitled, immediately, to at least a large part of the readiness-to-serve charge, keeping in mind all the time that I believe that the Johnstown Fuel Supply Company would have the right to do that anyway, but that it would not do it unless this matter is approved by the Commission. For that reason I would like to ask if it would not be possible for this case to be set down for an argument on [fol. 501a] that one question. Do I understand that the full Commission sits in executive session next week?

By Commissioner Rilling: Yes, sir.

By Mr. McCahill: Might we have next week some day for a presentation to the full Commission of this fundamental question?

By Commissioner Rilling: Don't you think it proper for you to present the application in writing, and serve a copy on each of the complainants, as well as upon the Peoples Natural Gas Company, and then the Commission will have before it, when it meets next week, the application, and will pass upon it and fix a time, or otherwise. We do not see any reason why you should not in the future be given an opportunity to be heard on this matter. We will however defer to the judgment of the entire Commission.

By Mr. McCahill: The application would be a very short one,

which I have suggested in my motion, that immediately the Johnstown Fuel Supply Company be authorized to put into effect at least a portion of the rate and tariff which it has filed with this Commission.

[fol. 502a] By Commissioner Rilling: I think that before the complainants are held to reply to you that they should be given an opportunity to know just what your application is, that they may meet you in that matter.

By Mr. McCahill: I will file a written application. I do not want, however, to lose the opportunity of appearing before the Commission next week, as I understand they go into executive session only once a month.

By Commissioner Rilling: No, but next week is election week, and we will have a session on Monday, and then the Commission will meet again on Monday and Tuesday in executive session for the next three weeks. I doubt very much if the matter can be disposed of before a week from Monday; but, if you can get your application in before the Commission, a written application, before Monday——

By Mr. McCahill: I will file that today.

By Commissioner Rilling: We will then act upon it on Monday, and fix a time to hear the matter in the near future. I suggest that you serve a copy immediately upon the complainants, as well as upon the Peoples Natural Gas Company.

[fol. 503a] By Mr. Cunningham: In order that this record may be complete, I desire to say in behalf of the City of Johnstown, that, of course, an offer of that kind would be resisted by the city, because the gentlemen entirely overlooked the position of the ordinance, which ordinance has been offered in evidence; and Mr. Gannett's testimony being, of course, that an estimation of the operating expenses was made prior. I want to state this now so that this record will show that we oppose the application.

By Mr. McCahill: We have taken all those matters into consideration, and still believe in our position.

By Commissioner Rilling: Aside from this application, what is the opinion of counsel as to the position this case is now in?

By Mr. McCahill: It is ready for filing of briefs.

By Commissioner Rilling: Is it your thought that the testimony is closed, and that it is for the Commission to pass upon the matter finally?

By Mr. McCahill: It is, so far as we are concerned.

[fol. 504a] By Mr. Gordon: Before the record is closed, the Peoples Natural Gas Company would like to renew their motion, that both these complaints be dismissed as against them, for the reasons: (1) That it is not a necessary party to this proceeding; (2) That so far as its relations to the Johnstown Fuel Supply Company, is concerned, it is not engaged in the public service; (3) That so far as the production of the gas which we sell to the Johnstown Fuel Supply Company is concerned, it is engaged in interstate commerce; and (4) That so far as the purchase of the gas from the

West Virginia Company, and the transportation of the same, is concerned, that is also an interstate matter.

By Mr. Cunningham: Replying to the suggestion as to where we think we stand, it seems to us, may it please the Commission, that there are several questions here which are fundamental. We have offered all the evidence that we have, and everything that is available to us. It seems to us that involved in the question of rates especially as to the proposed increase in the rates of the Johnstown Fuel Supply Company—is the further question of the amount that the company is paying the Peoples Natural Gas Company, because that is a rate really being charged by the Peoples Natural Gas Company to the people of Johnstown, or to the consumers of Johnstown. Then there is the further question of whether or not the Peoples Natural Gas Company is engaged in the public service business in [fol. 505a] bringing this gas. In the supplemental complaint it is charged that they are, and they have filed no tariffs at all, and that is admitted in their answer to the supplemental complaint. Now, that, I apprehend, is one of the fundamental questions. It is true that we have not offered any evidence particularly directed to this rate of 21 cents charged, and the 24½ cents claimed, I believe, by the Peoples Natural Gas Company, except as that is involved in the amount being paid by the consumers in Johnstown. Our position is, as a matter of law, that this gas is being furnished jointly, and that all the evidence goes not only to the reasonableness of this readiness to serve charge, which is a new aspect of the tariffs, as I would call it, of the Johnstown Fuel Supply Company, but necessarily involves the rate paid by that company under this contract to the Peoples Natural Gas Company.

Now, I want to say that we have no further evidence. We have offered all that we have, but we think all of these matters are involved. It is a question up to the Peoples Natural Gas Company as to whether they want to offer any evidence or not on that matter. It seems to me they are standing on their legal proposition, purely and simply, and, of course, that is their right.

It will then be borne in mind, however, that one of these complaints was filed before these rates became effective, which, clearly, puts the burden of sustaining this 21 cent charge on the Peoples Natural Gas Company, if that company is subject to the jurisdiction [fol. 506a] of the Commission; so that, we do not feel that we have any burden in that matter.

By Commissioner Rilling: The Commission, by a former report, filed within a very few days, in the case of a complaint against the Fayette County Gas Company, where the facts were primarily the same as they are in this case, held and determined that the supply of gas in that case is not interstate commerce, and therefore, that the Commission had full jurisdiction over the matter.

So far as the other questions you have raised in your motion, Mr. Gordon, possibly the Commission had better file a written report as to its acts in connection with the matters, and we will take it for granted that none of the parties have any other or further testimony to produce today, irrespective of what our opinions may be.

By Mr. McCahill: We have not, and I assumed when I made my motion that the case probably would be submitted to the Commission on written briefs, supported by oral argument after the written briefs have been filed. I understand that is the practice of the Commission, and that it is pending during the time of the preparation of those written briefs and the oral argument

By Commissioner Rilling: That need not delay your oral argument in any way. You may make your application; but, if the mo-
[fol. 507a] tion of Mr. Gordon is to be granted, of course, that would eliminate the Peoples Natural Gas Company from this case. If it is to be refused, then there is a direct complaint filed against that company, to which an answer has been filed, and it will necessitate the taking of further testimony. Therefore, we will first dispose of that motion in the very near future.

By Mr. McCahill: Are we to understand that the view of the Commission is that the half of the Peoples Natural Gas Company will be determined without argument, or that the Commission will dispose of it after an argument?

By Mr. Gordon: We would like to have an opportunity to file briefs, and also to be heard in oral argument if the Commission will indulge us. We think the question in our case is a different question from the one raised in the Fayette County Gas Company.

By Commissioner Rilling: We will prefer to have you file briefs. How soon can briefs be filed in the matter?

By Mr. Gordon: I do not know what is the usual time allowed. We will only require a reasonable time, I should say, two weeks.

By Commissioner Rilling: The usual time to file, as a rule, where it is a final adjudication, and is not some preliminary question is [fol. 508a] fifteen days. But if counsel wish to arrange to do it in less time, then we will also ask counsel on the other side to file briefs in a less time.

By Mr. Gordon: I think possibly we can prepare our briefs in ten days.

By Commissioner Rilling: How long will you require, Mr. Cunningham?

By Mr. Cunningham: And I think we can file ours in six days after service of the company of Mr. Gordon's briefs.

By Commissioner Rilling: The stenographer will note that the case is continued, to be heard at a future time to be fixed by the Commission. As to the motion made by counsel by the Peoples Natural Gas Company, counsel for that company will file their written brief with the Commission and serve a copy on the complainants, each of the complainants, within ten days, and the complainants and the Johnstown Fuel Supply Company will within ten days, file reply briefs, and the matter will then be fixed for argument before the whole Commission.

By Mr. McCahill: Do I understand that until this matter is settled, my motion will not be effective?

[fol. 509a] By Commissioner Rilling: No, sir.

Hearing continued.

CERTIFICATE

I hereby certify that the foregoing is a true and accurate transcript of the proceedings before the Public Service Commission of the Commonwealth of Pennsylvania in the within matter.

H. F. Jolly.

[fol. 510a] Complaint Docket, No. 1098

LOUIS FRANKE

vs.

JOHNSTOWN FUEL SUPPLY COMPANY & PEOPLES NATURAL GAS COMPANY

Complaint Docket, No. 1083

CAMBRIA STEEL COMPANY

vs.

JOHNSTOWN FUEL SUPPLY COMPANY & PEOPLES NATURAL GAS COMPANY

Stenographic Report of Hearing Held in the Rooms of the Commission, in the Capitol, at Harrisburg, on Wednesday, September 8, 1920, at 9:30 a. m., Commissioner Rilling, Presiding.

[fol. 511a] Appearances:

Arthur E. Young, Esq., George B. Gordon, Esq., for the Peoples Natural Gas Company.

David I. McCahill, Esq., for the Johnstown Fuel Supply Company.

Francis Hamilton, Esq., for the Cambria Steel Company.

Tillman K. Saylor, Esq., City Solicitor; J. E. B. Cunningham, Esq., for the City of Johnstown.

MINUTES OF MEETING OF COMMISSION—September 8, 1920

After an informal discussion, the sitting Commissioner directed that the following order be placed upon the record:

The respondents, the Peoples Natural Gas Company and the Johnstown Fuel Gas Company, are required to continue their service in the city of Johnstown at least until the first day of December, 1920. In the meantime, the Commission will fix a time for hearing in order to permit the parties to offer such evidence as they may desire in the case.

[fol. 512a] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

File C-1083. File C-1098

CAMBRIA STEEL COMPANY

vs.

JOHNSTOWN FUEL SUPPLY COMPANY, PEOPLES NATURAL GAS COMPANY

LOUIS FRANKE, Mayor,

vs.

JOHNSTOWN FUEL SUPPLY COMPANY, PEOPLES NATURAL GAS COMPANY

Alleged Unjust and Unreasonable Increase in Rates for Gas Service to Both Domestic and Industrial Consumers

MINUTES

Hearing Held in Pittsburgh, Pa., July 6, 1921

Hon. John B. Reed, Com.

Present:

George B. Gordon, Esq., and Allen T. C. Gordon, Esq., of Gordon & Smith, 1561 Frick Annex, and Arthur E. Young, Esq., 545 Wm. Penn Place, Pittsburgh, Pa., for the Peoples Natural Gas Company. [fol. 513a–540a] David I. McCahill, Esq., of McCahill and McCahill, West Penn Building, Pittsburgh, for Johnstown Fuel Supply Company.

Tillman K. Saylor, Esq., City Solicitor of Johnstown, Pa., and Louis Franke, Mayor, Complainant at No. 1098, and Cambria Steel Company, Complainant at No. 1083.

Hon. J. E. B. Cunningham of Harrisburg*h*, with Mr. Saylor, for Complainant Louis Franke, Mayor, C-1098.

[fol. 541a] STATEMENT OF COMMISSIONER

By Commissioner Reed: It is the understanding of the Sitting Commissioner that Counsel representing the respective gas companies and Counsel representing the City of Johnstown are in agreement that the first question that shall be determined by the Commission is whether the Commission still maintains that it has jurisdiction over [fol. 542a] the Peoples Natural Gas Company to compel it to supply gas to the Johnstown Fuel Supply Company as it has heretofore been doing; and also whether the Commission shall order that supply to be continued as heretofore.

If the Commission so holds, that the Peoples Natural Gas Company shall then be required to file a tariff indicating the rates which it proposes to charge for the gas thus supplied, together with its rules and regulations under which the supply is to be furnished, which tariff shall be subject to complaint by the Johnstown Fuel Supply Company or the City of Johnstown or any other consumer who may be affected by that tariff. In that event testimony shall then be taken as to the reasonableness of the rates thus proposed to be charged and the case shall then be finally determined under the evidence as to all rates involved, subject to appeal as provided by law.

TESTIMONY OF MR. GEORGE W. CRAWFORD

Mr. GEORGE W. CRAWFORD, called on behalf of respondent Peoples Natural Gas Company and duly sworn, testified as follows in response to

Direct examination by Mr. Gordon:

Q. Mr. Crawford, where do you live?
A. In Pittsburgh.
Q. How long have you lived in Pittsburgh?
A. About twenty years.
[fol. 543a] Q. Have you been engaged in the natural gas business?
A. I have.
Q. How long?
A. About thirty years.
Q. Did you have anything to do with the company known as The United Fuel Gas Company?
A. I did.
Q. I call your attention to an ordinance of the City of Johnstown granting the United Fuel Gas Company the right to lay pipe line in the streets of the town, which was approved March 26, 1906, and is already an exhibit in this case, J-1, and ask you what your connection was with the United Fuel Gas Company at that time? That is, the time of the approval of the ordinance, March 26, 1906?
A. We applied for this ordinance of the City of Johnstown at that time and—(Interrupted).
Q. What was your connection with the company at that time?
A. I was one of the owners of the company.
Q. Do you remember what official capacity you had?
A. I was President of the company.
Q. And at that time what was the United Fuel Gas Company?
A. The United Fuel Gas Company was organized under the laws of the State of West Virginia for the purpose of producing, supplying, transporting and distributing natural gas.
Q. And did it have any properties?
A. Yes. It had leases in West Virginia.
Q Did it own any pipe line?
[fol. 544a] A. Not at that time.

Q. Now, Mr. Crawford, at the time that you procured this ordinance from Johnstown, which is the ordinance under which the Johnstown Fuel Supply Company is now operating, and accepted its provision for that company, where did you intend to get your natural gas?

A. We intended to get it from West Virginia and Pennsylvania. It was our intention to merge or to buy out certain other interests, join them with the United Fuel Gas Company, and our purpose in getting a franchise in Johnstown was to get a market for this gas that was to be produced by this merger of these certain interests.

Q. At that time did you people who were interested in the United Fuel Gas Company own any active operating companies?

A. Yes. We owned the Fayette County Gas Company that supplied gas to Uniontown, Connellsville, Mt. Pleasant and Youngwood, Youngwood, I believe, was the farthest north that our line went.

Q. And where did it have its source of supply at that time?

A. Well from Pennsylvania and West Virginia.

Q. You did have a pipe line leading from West Virginia north?

A. Yes.

By Mr. Cunningham: I would like to ask for an offer or a little indication of what connection this testimony has to the issue that is now before the Commission.

[fol. 545a] By Mr. Gordon: Mr. McCahill, on the part of the Johnstown Company in this answer, made the allegation that the Johnstown Fuel Supply Company had never had any idea of supplying natural gas of its own, but from the beginning the understanding had been that it was going to get its supply of natural gas from the Peoples Company and I am just attacking here that issue, because I will cover a good many points so as to get at the beginning and bring it down to the present time. I have no objection to this testimony being taken subject to objection hereafter.

Objected to by counsel for Complainant as incompetent, irrelevant and immaterial to the issue now before the Commission.

By Commissioner Reed: We will receive it subject to the objection.

Q. And that company, Mr. Crawford, was supplying gas in the towns that you have named?

A. Yes.

Q. And if I understand you, it was your idea to consolidate that and some other interests with this?

A. Fayette County gas.

Q. With this United Fuel Gas Company?

A. Yes.

Q. I show you a paper which has been marked "Exhibit J-9", which is an agreement entered into the 31st of December, 1906, between the Peoples Natural Gas Company and George W. Crawford, Harold E. Crawford, M. C. Treat and John W. Donnan and [fol. 546a] ask you if you are the George W. Crawford who is one of the parties to that agreement?

A. Yes, sir, I am the George W. Crawford.

Q. That is a contract between you four individuals and the Peoples Natural Gas Company with reference to the supply of natural gas in Johnstown, is it not?

A. Yes, sir.

Q. I wish you would state what the reason was why you gentlemen changed your plan of supplying natural gas yourselves in Johnstown and led to the making of this contract with the Peoples Company for a supply?

A. Well, we failed to get the parties to agree to join this combination and we gave it up, gave up the idea of trying to supply gas from the United Fuel Gas Company. We did not feel that they had sufficient gas to warrant us to take the supply to Johnstown.

Q. Now, I noticed that the sixth paragraph is "that this contract shall go into force and effect immediately after its execution and shall remain in force and effect for the term of ten years from the first day of October, 1907."

I also call your attention to the fact that at the bottom of this agreement is an endorsement constituting its assumption by the Johnstown Fuel Gas Company, signed by yourself, by George W. Crawford, President, under date of the 31st of December, 1907, and ask you if you are the Crawford who signed that as president of the Johnstown Fuel Supply Company?

A. I am.

Q. I want to call your attention to the articles of association of the Johnstown Fuel Supply Company which are in evidence already [fol. 547a] in this case and are marked "Exhibit J-4," which were approved by the Governor on the 3rd day of May, 1907, and are recorded in the Secretary's office the same day. I noticed that in the list of incorporators that paper contains a list of incorporators one of whom is George W. Crawford, Emlenton, Pennsylvania. Is that yourself?

A. Yes, sir.

Q. The next one is C. E. Crawford of Emlenton, who is he?

A. That was my brother.

Q. And the next one was M. C. Treat of Washington. Do you know him?

A. Yes. He was associated with me in business.

Q. And J. M. Girard of Columbus, Ohio?

A. He was associated in business with me.

Q. And H. C. Reeser, Pittsburgh, who was he?

A. He was our Secretary at that time.

Q. And J. C. Wyckoff of Pittsburgh?

A. He was our Assistant Secretary and Treasurer.

Q. Those are the subscribers as given in the Articles of Association. They were all associates of yours were they?

A. Yes.

Q. And were they all people who were interested in this original United Fuel Gas Company?

A. No. Some of them were not interested. Mr. Girard and Mr. Wyckoff were not interested, and Mr. Reeser.

Q. But yourself and your brother and Mr. Treat were?

A. Yes.

[fol. 548a] Q. You and your brother and Mr. Treat were all people who were in the United Fuel Gas Company?

A. Yes.

Q. I want to call your attention, Mr. Crawford, to one or two things that are in this paper. It says: "Second. Said corporation is formed for the purpose of producing, dealing in, transporting, and storing and supplying natural gas." "Third: The place or places where natural gas is intended to be mined for and produced or received are the Counties of Greene, Fayette, Somerset, Westmoreland, Cambria, Indiana, Armstrong, Clarion and Jefferson in the State of Pennsylvania;" and I want to ask you whether these Counties were counties in which at that time natural gas was being produced?

A. Yes,—a possible chance for a gas supply from those counties.

Q. It was natural gas territory?

A. Yes.

Q. The fourth paragraph is the place or places here it is to be supplied, that is Johnstown and vicinity. The fifth,—"the general route of its pipe line or lines and branches is from a point at or near Mt. Morris in Greene County, Pennsylvania, thence in a northeasterly direction through and throughout the counties of Greene, Fayette, Somerset, Westmoreland, Cambria, Indiana, Armstrong, Clarion and Jefferson, in the State of Pennsylvania, to a point at or near Siegel in said county of Jefferson;" and I want to ask you now where Mt. Morris was in Greene County with reference to the Pennsylvania-West Virginia State Line?

[fol. 549a] A. Mt. Morris is right near the State Line.

Q. I wish you would state what the reason was that led you to designate the producing territory and this location of these pipe lines when you had already entered into a contract as individuals which you subsequently assigned to this company, with the Peoples Company for a ten years' supply?

A. Well we felt they might not be able to supply us with gas and the contract was for only a short period of time and we possibly would produce our own gas, if we could find it, and supply Johnstown.

Q. Was there any verbal understanding or agreement with The Peoples Natural Gas Company as to the supply of natural gas other than that set forth in the written contract which I have shown you?

A. No.

Q. Now Mr. Crawford at that time, the time of the entering into of this contract which has been marked "Exhibit J-9," were any of the gentlemen who were connected with your company, stockholders or officers or directors or had any interest of any kind in the Peoples Natural Gas Company or in the Standard Oil Company of New Jersey?

A. Not at that time.

Q. You did not individually?

A. No.

Q. As a stockholder or otherwise have any interest in either the Peoples Company or the Standard Oil of New Jersey?

A. No.

Q. And do you know about the others, your associates, your brother and Mr. Donnan and Mr. Treat, well enough to know whether they had?

[fol. 550a] A. Not to my knowledge.

Q. Was that contract the subject of negotiations and the ordinary discussion between business men to get the best bargain possible?

A. Yes, sir.

Q. It was a contract made in good faith and at arm's length?

A. Yes, sir.

Q. I call your attention to a paper which has been marked "Exhibit J-10," which is a copy of an agreement entered into the second day of December, 1908, between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company and which was signed by George W. Crawford on behalf of the Johnstown Fuel Supply Company. I wish you would state whether you are the man who signed that contract as President of the Johnstown Fuel Supply Company?

A. I did.

Q. And was it executed about that time and for the purposes set forth in it?

A. Yes, sir.

Q. I call your attention to a paper which has been marked and is already in evidence in this case, "Exhibit J-3," being an agreement between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company, dated August 12, 1909, which was the contract which was in existence up to the first day of October of last year between these companies. And I call your attention to the fact that it is executed by yourself, by George W. Crawford, President. Is that correct?

A. Yes, sir.

Q. I wish you would state whether or not you took any part in [fol. 551a] any of the negotiations that led up to the execution of that contract?

A. I did not.

Q. Had you sold your interest in the Johnstown Fuel Supply Company before that time?

A. At that time we sold our stock in the Johnstown Fuel Supply Company.

Q. And how did you happen to sign as President?

A. I was still an officer, still in office.

Q. Well, was it the purchasers of your group of stock in those companies that negotiated this contract and asked you to sign it?

A. Mr. Emmet Queen, yes.

Q. You gentlemen who were the original owners of this company had sold or agreed to sell your stock to Mr. Emmet Queen or to some persons he represented?

A. Yes.

Q. And as you understand it he had negotiated this new contract

and you signed it at their request as President of the Company who had not yet been superseded by their new officer?

A. Yes.

Q. But you were not familiar with any negotiations established with reference to the signing of that new contract?

A. No.

Q. Have you had any interest in the Johnstown Fuel Supply Company from that time on?

A. I have not.

Q. Did you still retain your interest in the old United Natural Gas Company?

[fol. 552a] A. Yes.

Q. Do you still have an interest in that company?

A. I have.

Q. What and where does that company operate?

A. It operates in West Virginia.

Q. Is it a producer of natural gas?

A. A producer and distributor and transporter of natural gas.

Q. You have been, you say, for something like thirty years engaged in the natural gas business?

A. I have.

Q. Have you had occasion to consider the question of what the effect would be upon the natural gas business of imposing upon one company the duty to supply natural gas to another?

A. Yes, sir. I think it would be ruinous to the gas companies and to the consumers—to the service.

Q. Now, I wish you would state at length for the benefit of the Commission why you think that it would be ruinous both to the companies and to the consumers to have that duty imposed by the Commission upon natural gas companies?

Question objected to by counsel for complainant as incompetent, irrelevant and immaterial. The testimony is further objected to because it appeared from the testimony already in the case that the service being rendered at Johnstown is a service rendered jointly by the Peoples Natural Gas Company and the Johnstown Fuel Supply Company to domestic and industrial consumers in that city.

[fol. 533a] By Commissioner Reed: The objection may be well founded, but we will receive the testimony for the present for the consideration of the entire Commission, subject to the objections made.

A. I feel it would be ruinous to the gas companies and to the service, detrimental to the gas companies and to the service.

Q. Will you tell us why you think that?

A. I believe it would be the means of stopping developments; that a great many of the companies would possibly depend on the larger companies to supply them with gas, and in that way stop the development of gas. We need all the development we can get. All the gas companies are busy drilling new wells, developing new territories, trying to get a supply of gas. Now, our company that I am

president of, the Ohio Fuel Supply Company, is not in position even to take care of its own domestic trade during the peak load. Now, it would be a great detriment to our business if we were compelled in the winter season to supply some other company with gas because we would simply take it away from our own consumers.

Q. Well, now, then, Mr. Crawford, in your business is it necessary to plan ahead and develop ahead for some known need?

A. Yes, indeed; we are at that all the time. We are developing all we can all the time, trying to provide gas and a surplus of gas to take care of the peak load in the winter time.

Q. Now, do you have to make estimates and all customers in the [fol. 554a] business too make estimates for what your requirements of your customers will be in the future?

A. Yes. We make estimates and——

Q. And then you do your utmost to develop and get gas sufficient?

A. Yes.

Q. And is it necessary in the summer time to shut in wells to conserve the gas so as to have it in times of greatest need?

A. Yes.

By Mr. McCahill: You will not object to our asking leading questions, Mr. Gordon?

By Mr. Gordon: Oh no. These things are so well known it is only a question of getting it on the record.

By Mr. McCahill: Just so you extend the same privilege to us.

By Mr. Gordon:

Q. I think you did say Mr. Crawford that at the time you made this contract originally you realized that it was only for a limited period and there was doubt even whether it could be performed during all that period?

A. Yes, sir.

Q. And that was the reason why you got a charter for yourself? Looking toward the supply in the future?

A. Yes, sir.

[fol. 555a] Q. What is the general situation at the present time in reference to the supply of natural gas in Pennsylvania and West Virginia?

A. The supply of natural gas is constantly decreasing.

Q. And how about the expense of production?

A. The present production?

Q. Yes; the expense of production?

A. It costs a great deal more now; it is very high. The wells that—(Interrupted).

Q. And is the increased cost of natural gas caused primarily by the expense of distribution in the pipe lines or is it by the expense of producing in the fields?

A. The expense of producing in the fields.

Cross-examination by Mr. Cunningham:

X Q. Mr. Crawford, I want to see if I follow your testimony about the early history of these companies. You and your associates organized the United Natural Gas Company did you?

A. Yes, sir.

X Q. And that is a West Virginia corporation?

A. Yes, sir.

X Q. Then you came to the City of Johnstown and asked for a franchise to occupy the streets of that City for the purpose of supplying gas in Johnstown?

A. Yes, sir.

X Q. You got a franchise?

A. Yes, sir.

X Q. It contains certain stipulations about rates and so on.

[fol. 556a] A. Yes, sir.

X Q. Now, then, did the United Natural Gas Company ever supply natural gas in the City of Johnstown?

A. No, sir.

X Q. After getting the franchise you and your associates also organized the Johnstown Fuel Supply Company?

A. We did.

X Q. And did the Johnstown Fuel Supply Company buy this franchise which you had already obtained for the former Company?

A. They did.

X Q. And that is the way the Johnstown Fuel Supply Company obtained its franchise which it is still exercising in the City of Johnstown?

A. Yes, sir.

X Q. Then as early as 1906 there was a contract between you and your associates as individuals as the Peoples Company to buy gas to be used in Johnstown?

A. Yes, sir.

X Q. That is the Exhibit in this case marked J-9?

A. Yes, sir.

X Q. Then there was a subsequent contract in 1908 between the Johnstown Fuel Supply Company which you and your associates had organized, with the Peoples Company relative to the laying of a pipe line or something of that kind, which you have been shown by Mr. Gordon and which is Exhibit J-10; is that correct?

A. Yes, sir.

X Q. And then in 1909 there was a contract entered into between [fol 557a] the Johnstown Fuel Supply Company and the Peoples Company, which is already in evidence in the case, and is the contract under which the companies have been operating since that time; is that correct?

A. Yes, sir.

X Q. And that 1909 contract I assume superseded these trial contracts, in a general way. Is that your understanding of it?

A. Yes.

By Mr. McCahill:

X Q. At the time the Johnstown Fuel Supply Company was organized, what was its capital stock, if you know?

A. No, I cannot remember now.

X Q. Do you know whether or not it had ever taken out any bonds for the purpose of financing its construction?

A. It did not, that I know.

X Q. Did it do anything looking toward an independent supply of gas other than stating in its charter the territory which it might desire to mine and get gas from?

A. No, it did not.

—. At the time this contract of the 12th of August, 1909, was made, which superseded these previous contracts, there was no intention on the part of yourself and your associates at that time to independently, on the part of the Johnstown Fuel Supply Company, by the Johnstown Fuel Supply Company, mine for and transport gas and transporting the gas to Johnstown for deliverance to the consumers at Johnstown?

[fol. 558a] A. Well, that was before we entered into the contract with the Peoples Company for gas. We expected to merge separate companies that had a large supply of gas and in that way get the supply.

X Q. When did you give up that thought?

A. Before we made the contract.

X Q. But was it in 1906, 1907 or 1908, or prior to August, 1909, when this contract was made?

A. Between the time we took the franchise and the time we made the contract; I don't know the exact date.

By Mr. Gordon:

Q. The first contract, you mean?

A. Yes, the first contract.

By Mr. McCahill:

X Q. But it is a fact, is it not, Mr. Crawford, that at the time this contract of 1909 was made, which was the first contract entered into by the Johnstown Fuel Supply Company—at that time you had no intention at all of developing your own field?

By Mr. Cunningham: That is objected to. The witness has testified that he was out of the company at that time and had nothing to do with that contract except signing his name.

By Mr. Crawford (witness): No.

[fol. 559a] X Q. You don't know anything about the relationships of the parties at that time?

A. No.

X Q. Did you know of the contract obtained at the time you signed it?

A. Well, I knew very little about it.

X Q. You don't mean to say that you signed a twelve or fourteen page contract here as President of the Company and didn't know what you were signing?

A. In a general way, I did. The people who purchased the property wanted a contract and it was a part of the agreement and I did it.

By Commissioner Reed:

Q. They were the parties who were interested?

A. They were the parties that purchased the stock from us and wanted that contract?

By Mr. Gordon:

Q. You were just a hold-over president, they had not elected a new president, and you signed the papers as he gave them to you?

A. Yes.

By Mr. McCahill:

X Q. Mr. Crawford, you testified a moment ago that at the time the first contract was made with the Peoples Natural Gas Company you considered it a temporary contract and that you did not know whether they could supply the gas or not, and that for that reason you went out and took out this charter for the Johnstown Fuel Supply Company, is that correct?

[fol. 560a] A. Not a temporary contract. That they might not be able to carry out the contract?

X Q. On what do you base the suggestion that they might not be able to carry out the contact?

A. Well, they had the right to supply their own towns and cities with gas and they might not be able to take care of Johnstown proper.

X Q. But that was merely your idea?

A. Oh, yes.

X Q. Rather than any intimation or suggestion that was made by the Peoples Natural Gas Company, is that correct?

A. Well, we thought a great deal about the gas supply and whether or not they would be able to take the supply—always do.

X Q. And didn't they represent to you, representing the local company at Johnstown, whether it would be United Natural Gas Company or the intended Johnstown Fuel Supply Company, that they had an adequate supply of gas, that they had adequate fields and they had adequate capacity in the pipe lines, and that they could supply the gas?

A. I don't know as they did.

X Q. Would you say they did not?

A. I beg your pardon?

X Q. I say, would you say they did not make those representations?

A. I don't know whether they did or whether they did not. I had faith in their being able to supply gas but I was not sure whether they could complete that contract for ten years. That is a long time in the natural gas business.

[fol. 561a] X Q. Now Mr. Crawford, there never were any plans developed by the United Natural Gas Company, by yourself or by any one else, to develop gas and carry it to Johnstown for the purpose of supplying the local trade in Johnstown other than through the Peoples Natural Gas Company, was there?

A. No; no plan developed.

X Q. And there was, as a matter of fact, when you applied for a charter for the Johnstown Fuel Supply Company, nothing to prevent you from including the whole stated territory in your charter application, was there?

A. No.

X Q. And being a shrewd business man and probably represented by good lawyers, you included all the territory that you might at any time in future ever want to use; is not that correct?

A. Certainly.

X Q. But at that time you had no definite plan at all for developing that field?

A. No, not at that time that we made the contract.

X Q. Well, at the time you took out the charter for the Johnstown Fuel Supply Company?

A. Yes.

X Q. You never had any definite plan at that time, had you, for developing the field?

A. No. No definite plan, no.

X Q. Have you any idea what it would have cost to run the pipe line from Mount Morris, in Greene County, to Johnstown for delivering this gas necessary to supply Johnstown?

A. Yes, we had an idea and made figures on it at the time.

[fol. 562a] X Q. Do you remember what it was?

A. No.

X Q. Do you remember whether it sounded feasible to expend that much money for that purpose?

A. It did.

X Q. It sounded feasible to expend money for that purpose—for the sole purpose of supplying Johnstown?

A. No.

X Q. Let me make it clear to you, Mr. Crawford, I am speaking now about the plans of the Johnstown Fuel Supply Company for developing gas anywhere in Greene or Washington or Fayette County, or in West Virginia, and carrying it to Johnstown for the sole purpose of supplying the local trade. Did you ever have any figures on what that would cost?

A. Not for the Johnstown Fuel Supply Company, but for the United Gas Company.

X Q. I am speaking now about your plans at the time you took out the charter for the Johnstown Fuel Supply Company and included all this territory in this charter. Were there any such plans at that time?

By Mr. Gordon: What do you mean, plans or figures? You started asking about prices.

By Mr. McCahill:

X Q. My question is as to plans—plans as to the United Natural Gas Company's bringing gas to Johnstown to supply consumers there from anywhere in Washington, Greene or Fayette Counties, or any of the places stated in the charter—for the sole purpose of supplying gas to Johnstown?

[fol. 563a] A. I have already answered that. I said that we gave up our plans of getting a supply from West Virginia. The United Natural Gas Company sold its rights to the Johnstown Fuel Supply Company and the Johnstown Fuel Supply Company's charter was taken out with the privilege, or for the purpose I mean, of developing gas, transporting gas and distributing gas in addition to our gas contract with the Peoples Natural Gas Company, feeling that some time they might not be able to supply us and we might possibly be able to go out and find gas to take care of them.

X Q. That was a bare possibility, however?

A. Yes, sir.

X Q. And no definite plans were made?

A. No definite plans were made.

X Q. For carrying that into execution? That is correct, is it? I want an answer. The stenographer cannot get a nod on the record?

A. Yes.

X Q. What rights did the United Gas Company have in Pennsylvania in its charter, if you remember?

A. The United Natural Gas Company?

X Q. Yes.

A. Well, I don't know as they ever had any rights in Pennsylvania. Well, they must have had some rights, evidently, in Pennsylvania, to take the charter.

X Q. You mean, taking the franchise?

A. Yes; to take the franchise in Johnstown. I guess they must have had some rights. I don't know.

By Mr. Gordon:

X Q. You said you were supplying gas in Westmoreland County, didn't you?

[fol. 564a] A. No. We did not buy gas from the United Natural Gas Company. We had nothing to do with that.

X Q. Excuse me for interrupting you, but I thought you testified you were supplying gas to Johnstown, Youngstown——

A. That was the Fayette Gas Company.

X Q. Owned by the same people?

A. Yes.

By Mr. McCahill:

X Q. So that when the charter for the Johnstown Fuel Supply Company was taken out there was no company authorized to furnish

or distribute gas in Johnstown, was there—natural gas I am speaking of now, so far as you were concerned?

A. No. The Johnstown Fuel Supply Company was the company supposed to distribute gas in Johnstown.

X Q. And up to the time that company was chartered, there was no company with charter rights to supply Johnstown with gas, was there?

A. Well, the franchise was made—the United Natural Gas Company had——

By Mr. Gordon: The acceptance of that ordinance which is in evidence shows that the United Natural Gas Company had already registered in Pennsylvania.

X Q. Now Mr. Crawford, in the investigation which you made and I assume you made some investigation as to the possibility of transporting natural gas from Greene or Washington or Fayette [fol. 565a] counties, or from West Virginia to Johnstown, would you say it would be practicable, from a business standpoint, for any company, either then or now, to develop a field that distance from Johnstown and transport gas to Johnstown for the sole purpose of supplying Johnstown and its suburbs, from a profit standpoint?

By Mr. Gordon: That is objected to as not cross-examination.

. By Commissioner Reed: We will receive the testimony, subject to objection, to be passed on by the Commission.

A. It would not be feasible.

By Mr. Gordon: Will you amend that question by putting in what is in the charter, by saying the City of Johnstown, its suburbs, as well as such other places along the route or line of its pipe-lines?

By Mr. McCahill: No, I will not ask that. You may ask that question if you wish.

By Commissioner Reed: The charter is before the Commission and you cannot narrow or amend it.

X Q. Now, Mr. Crawford, in answer to a question by Mr. Gordon you said, if I understand you, that for one natural gas company to [fol. 566a] supply gas to another natural gas company for distribution, would be ruinous to the consumer; is that correct?

A. Yes, sir.

X Q. Now, do you mean that with special application to the City of Johnstown or is that just a general proposition?

A. General proposition.

X Q. Well, would you make that same answer with reference to the service which is necessary for the City of Johnstown and its citizens, and that is the question that is now before the Commission.

By Commissioner Reed: Don't you think, Mr. McCahill, that you had better leave that to the decision of the Commission? Under the unusual circumstances this is taken out of the rule.

By Mr. McCahill: Well, this is with reference to the particular facts. The witness has answered with respect to general facts.

By Commissioner Reed: It is really making a decision, is it not?

By Mr. McCahill: It is merely expressing an opinion on facts stated?

By Mr. Gordon: We object to the question as not cross-examination and as immaterial.

[fol. 567a] By Commissioner Reed: Whether Johnstown would be an exception to that general rule, we think is for the Commission under all the facts and circumstances of the case. The opinion of the witness may be helpful in a way and we will receive it, subject to the objection.

A. Well, I do not feel that I can answer the question. I do not understand and I do not know the circumstances of the case.

X Q. Well, I will say this, Mr. Crawford: If you knew that the contract which as entered into on the 12th day of August, 1909, provided that the Peoples Natural Gas Company should never supply gas during the period of the contract in the territory set forth in the contract, being Johnstown and its immediate vicinity, then would you say that it would be detrimental to the consumers of Johnstown to not have one company, one gas company, supply gas to the other company for th distribution in that territory in which the Peoples Natural Gas Company have agreed to stay out.

By Mr. Gordon: Objected to as incompetent; and particularly, if it is considered to be a hypothetical question, that it does not include all the facts necessary for a determination of the question. In other words, it is just picking out one fact in the controversy and making that the basis for the question.

X Q. Your statement then, Mr. Crawford, that if one company is required to furnish service to another company, that would be [fol. 568a] ruinous to the company and to the consumers—

A. Yes, sir.

X Q. —is merely a general statement and without any particular application to the Johnstown Fuel Supply Company and the Peoples Natural Gas Company being the companies before this commission?

A. Yes.

X Q. That is correct?

A. Yes.

X Q. At the time the United Natural Gas Company took its franchise in Johnstown and also at the time it incorporated the Johnstown Fuel Supply Company did yourself or your associates have any interest in the artificial gas plant then in existence in Johnstown?

A. We did not.

X Q. When do I understand you disposed of your interest in the Johnstown Fuel Supply Company?

A. At the time of this 1902 contract. I couldn't tell you the exact date.

X Q. I mean, how long prior to the execution of that, that is, before August 12, 1909?

A. Well, they probably had an option before that time. We gave an option on the stock. I don't know what time it was but it was before that date.

X Q. Did you know anything about the provision in this contract with reference to the consolidation of the artificial company with the Johnstown Fuel Supply Company?

A. In a general way, yes.

X Q. Did you have anything to do with the preparing of that [fol. 569a] provision or the insertion of it in the contract?

A. No.

X Q. Did you have anything to do with reference to the negotiation of that provision?

A. No.

X Q. At the time that was negotiated, if you know when it was negotiated, did you have any real interest in the Johnstown Fuel Supply Company or had you already sold out?

A. I had given an option, if we had not passed the stock. I don't think we had passed the stock.

X Q. So that you may know what provision of the contract I am speaking about I will read section 20 of the contract of August 12, 1909, which was signed by yourself as President of the Johnstown Fuel Supply Company.

"This contract is made in contemplation of the proposed consolidation of the buyer with the Citizens Light, Heat & Power Company of Johnstown. No reference herein contained to the supplying of the requirements of the Buyer shall be deemed to apply to the requirements and territory described in paragraph 23 hereof. The new consolidated corporation so to be formed, or its successors, or the assigns of the Buyer, or such consolidated corporation, if this contract is assigned, as provided in paragraph 25 hereof."

X Q. Did you have anything to do with the negotiation or the framing of that paragraph?

A. No.

[fol. 570a] By Commissioner Reed: So we may have it all together; as I understand the witness, his execution of this contract was a mere formal matter. That contract was negotiated by the parties who were taking over the stock of the Johnstown Fuel Supply Company and they made all their arrangements and made this contract and he merely executed the contract in connection with transferring the company over to them and had nothing to do with the negotiation of any of the matters contained in the contract.

By Mr. McCahill: It was not clear to me until just now that he did not have anything to do with the starting of the negotiations. It was not clear to me and that is the part of the question I wanted to get out.

X Q. The Johnstown Fuel Supply Company, Mr. Crawford, during the time you were president of it, never made any plans for financing its work other than the distribution line in the City of Johnstown?

A. No.

X Q. Those were the only plans they made?

A. That is right.

X Q. Did it ever consider at all raising money necessary to develop the fields set forth in its charter so as to produce gas?

A. No.

X Q. They never took any corporate action looking to that event?

A. No.

[fol. 571a] By Mr. Gordon: In connection with the cross-examination of the witness I wish to read on the record the fourth paragraph of the contract of the 31st of December, 1906:

"That the party of the first part shall not be responsible for any partial or complete failure in the supply of gas to be furnished under this contract growing out of the failure of the gas fields or which could not be prevented by the exercise of reasonable diligence on the part of the party of the first part."

We also offer in evidence paper identified as Exhibit J-9, being an agreement between the Peoples Natural Gas Company and George W. Crawford, and Carroll E. Crawford of Emlenton, Pa., and M. C. Treat and John W. Donnan of Washington, Pa., dated December 31, 1906.

Also paper identified as Exhibit J-10 being an agreement by and between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company, dated December 2nd, 1908.

[fol. 572a] TESTIMONY OF MR. JOHN G. PEW

Mr. JOHN G. PEW, called on behalf of respondent, Peoples Natural Gas Company, and duly sworn, testified as follows in response to

Direct examination by Mr. Gordon:

Q. Mr. Pew, at the time we tried the case before the Commission, last time, and took evidence, you were president of the Peoples Natural Gas Company?

A. Yes, sir, I was.

Q. And you were on the stand and testified?

A. Yes, sir, I did.

Q. Are you now connected with the Peoples Natural Gas Company?

A. In no way whatever except a witness today.

Q. When did you leave the Peoples Natural Gas Company?

A. I resigned on the first of July, 1918.

Q. What is your present business?

A. I am president of the Sun Ship Building Company and Vice President of the Sun Oil Company. The title is Sun Company.

Q. Those are corporations that operate in Philadelphia or the eastern part of the state?

By Commissioner Reed: I think the Commission is pretty familiar with them.

[fol. 573a] A. The ship yard is at Chester and the Sun Company do business all over the country.

Q. Have you any connection at the present time with the United Natural Gas Company?

A. I happen to be one of the directors of the United Fuel Gas Company for the last month.

Q. For a month past?

A. Yes. Before that I had not had any connection with the United Natural Gas Company for about ten years.

Q. So that for the period of about three years you have been entirely out of the natural gas business?

A. For three years I have been entirely out of the natural gas business.

Q. And you have at the present time no connection at all with the Peoples Company?

A. I have no connection with the Peoples Gas Company.

Q. Have you kept in touch with the natural gas situation?

A. I tried to.

Q. And coming now to the original contract between the Peoples Natural Gas Company and Mr. Crawford and his associates, did you negotiate that contract on the part of the Peoples Company?

A. I assisted Mr. C. N. Payne.

Q. Who was Mr. C. N. Payne?

A. He was the President of the Company and I was Vice President and Manager. I believe Mr. Crawford first went to New York and saw Mr. Payne and then we had different conferences afterwards at which I was present.

[fol. 574a] Q. Now coming to the later contract of 1909, did you negotiate that contract on the part of the Peoples Company?

A. I, with Mr. Bedford, our President, did. At that time Mr. Bedford was President.

Q. Whom did you meet in those negotiations? Whom did you negotiate with?

A. The only party I can at all name was Mr. Emmett Queen.

Q. Mr. Emmett Queen was an oil man?

A. He had been an oil and gas man, particularly an oil man all his life; for a long time a partner of Mr. J. M. Guffey, of Pittsburgh.

Q. And he is the man with whom you negotiated the new contract?

A. I believe he was the man who was forming the new company, the consolidation of the interests in Johnstown.

Q. That being a consolidation of the natural gas and the illuminating gas?

A. I believe the illuminating gas company and the heating company, or the two were a heating company there.

Q. And how about the electric company?

A. I could not answer that question for sure, whether they were in it or not. They called themselves the Citizens Light, Heat and Power Company, I believe.

Q. And there is a reference in the contract that "The Buyer has entered into a contract or contracts for the consolidation of the

Citizens Light, Heat & Power Company, incorporated for the purpose of and now supplying artificial gas and electric light, heat and power in the City of Johnstown, and now desires a new contract [fol. 575a] upon certain terms and conditions herein set forth." This contract which you negotiated contains a provision in paragraph 21 which is as follows: "This contract unless sooner terminated pursuant to the provisions herein contained shall continue thirty years from the date hereof. Upon the termination of the said contract the seller shall not be bound longer to maintain a pipe line or lines for the transportation of natural gas to the City of Johnstown or its vicinity." Paragraph 2 of the contract is,—

"The seller will, during the continuance of this contract, sell and deliver at the prices hereinafter stated to Buyer natural gas at the pressure aforesaid to the extent necessary to supply the consumers of the Buyer paying domestic rates, up to the capacity of the existing twelve inch line Derry to Johnstown, unless the Seller shall have given the Buyer not less than twelve months' written notice that on and after the date specified in such notice it will not furnish or deliver any more natural gas or that it will not furnish or deliver any more natural gas per day than the —" And paragraph 3 says— "The Seller shall have the right by giving such written notice at any time after the expiration of six years from the date hereof to entirely discontinue the delivery of natural gas or to limit the amount of natural gas which it can be required to furnish and deliver to the amount specified in such notice, and thereafter from time to time to further limit the amount which it may be required to furnish and deliver hereunder by further written twelve months' notice or notices or to entirely discontinue such delivery by such notice to that effect, which shall have the effect of terminating this contract [fil. 576a] except with regard to the obligations of the Seller under Paragraph 23 with regard to keeping all natural gas produced transported or delivered by it from use, consumption or sale in the said territory." I want to ask you, Mr. Pew, whether there was any side understanding or agreement between those companies which eliminated or modified in any way the written provisions of this contract in general and specifically the ones that I have read to you?

A. There was not.

Q. I want to ask you whether those were considered material matters on the part of the Peoples Natural Gas Company when you negotiated this contract?

A. Very material.

Q. Well, now, I wish to ask you both as a representative of the Peoples Company and as an expert in the natural gas business, what there was in connection with the business of the Peoples Natural Gas Company and the situation in Johnstown that made such provisions as that necessary?

A. The Peoples Natural Gas Company was organized and had a great many domestic consumers of its own. When Mr. Crawford came to us first in 1906, we had quite a surplus of gas. He wanted a longer contract. We would not give him a contract over ten

years, on account of the uncertainty of the natural gas business. In 1909, when a new company was formed, or rather the consolidation took place, they asked for a new contract. We guaranteed them that we would give them a six years' supply with the provision in the contract, which you have read, that we could cut them off after that. And our only idea of cutting them off would be and was then [fol. 577a] a diminishing of the supply of natural gas. The natural gas business——

Q. Well, now, I was going to ask you to go on and explain.

A. The natural gas business is a very uncertain business. While in a general way after you have drilled a well you can estimate that you would get other wells in the same territory, that is not always true. You lay a pipe line to a field and the field may last one year, it may last thirty years. Johnstown had the experience before of having had a supply of natural gas. About 1886, as I recall (I started in the natural gas business in the summer of 1886) there was a company formed called the Cambria Natural Gas Company. They laid a line from Westmoreland County, obtaining gas from around Latrobe and up in Westmoreland County, to Johnstown. I think their supply only lasted about seven years. They took up their lines after about ten years of business. Some time in 1896 or 1897 that line was taken up. They had no gas again until the gas was furnished through the Johnstown Fuel Supply Company to the —— by the Peoples Company to the consumers in Johnstown. With those experiences and fields playing out and the uncertainty, we felt that it was our duty (I am talking now as the Peoples Gas Company at that time) to first supply our own consumers. We also felt it was our duty to supply domestic consumers before manufacturing consumers were supplied; and all contracts were made, even before there was a Commission, all contracts were made subject to domestic consumers. I mean all manufacturing contracts. And the condition is the same today. For that reason I, as an officer of the Peoples Natural Gas Company would have objected very seriously [fol. 578a] to the signing of a contract that could not be terminated, on account of the uncertainty of the business. There are places all over the country, as these gentlemen all know, that have had gas and the lines have been taken up. Indianapolis had gas for about ten years and it does not have a bit of natural gas today. And on account of the uncertainty of the business we made such term contracts. In the testimony before we told of selling some gas to the United Natural Gas Company in the field, in the Clarion County field, some such contract as this, except we were just selling it to them in the line. That contract has expired. I believe they have gas for one year, or two perhaps.

Q. What I want to get at now, Mr. Pew, is your judgment as to what the effect would be upon the natural gas business in Pennsylvania, here, of having the Commission undertake to impose the duty upon one natural gas company of supplying natural gas to another.

By Mr. Cunningham: That is objected to unless the question is a specific question applying to the facts before the Commission and

relates to the question which is presented to the Commission. It is objected to as too general and not specific.

By Commissioner Reed: The witness may answer the question subject to the objection.

[fol. 579a] A. With the decreased volume of gas available at the present time if any company was asked to supply another company with gas, it would make every natural gas consumer they had on their lines suffer more on the cold days. There would be a greater shortage.

Q. Why?

A. Because there is not enough to go around.

By Commissioner Reed:

Q. That is, you mean each company has all the consumers it can supply?

A. Each company today has more consumers than it can supply under the present natural gas situation.

By Mr. Gordon:

Q. And what effect do you think it would have on the development, the uncertainty?

A. If I was in the natural gas business today and managing the natural gas business and was not able to know what I would have to supply, I am rather inclined to think I would be discouraged and would not know what to do, and possibly I would not be able to provide, possibly, for the consumers I had, any more than anybody else.

By Commissioner Reed:

Q. In other words, your opinion is that if there was a universal rule that one gas company would have to supply gas to another it would operate in slowing down operations and one result would be that the consumers would suffer for want of gas?

[fol. 580a] A. I cannot see anything else, Your Honor. Natural gas itself is different from any other service I know of for the reason that you cannot guarantee that you will have a supply for your own consumers let alone anybody else's.

By Mr. Gordon:

Q. I think you did state, Mr. Pew, in a general way what the present situation is in reference to natural gas. Is there any reasonable hope for a large increase in the future of the present supply?

A. From the present outlook, no. A person who would on the stand say absolutely that they would not discover new fields would be very foolish; but from the present known fields there is not.

Q. It is a shrinking supply at present?

A. That volume from the wells that are being drilled is decreasing every year and the rock pressure in the sand is decreasing every year in the territory being operated today. And in Pennsylvania and

West Virginia approximately all the natural gas territory now known is being operated.

Q. Now, Mr. Pew, can you tell us about what the present rock pressure is in those fields as compared with what it was when this contract of August, 1909, was entered into?

A. This will have to be only from memory, but I am not far from right. In West Virginia in 1909 there was something about like an average of seven hundred and fifty pounds of rock pressure from the wells then being operated by the companies I was connected with, and with the Hope Natural Gas Company and the Reserve Natural Gas Company. Today their rock pressure is about two hun-
[fol. 581a] dred and fifty pounds. There will be some wells that will be a whole lot higher, but the average is about two hundred and fifty pounds—and some down to atmosphere.

Q. How about Pennsylvania wells?

A. In Pennsylvania? The Peoples Company have always tried to conserve their Pennsylvania supply wherever they could save a well that was not being drained by some other company by being kept shut in for nine, ten, eleven months a year, just according to our demand. The pressure has not been decreased so rapidly since 1909, due to this fact, until the War period. In 1909 there was an average pressure, I would say, of something close to three hundred pounds. Today there is an average pressure of about one hundred and fifty pounds.

Q. In other words, those wells were drained during the war?

A. They would have stood up a little better if it had not been for the extraordinary demand made by the Government on all gas companies to supply manufacturers at all times during the year. In other words, instead of shutting wells in and saving them, for two years, during the summer time, as we had always done, every well that was available, or nearly every well that was available, was used night and day, both winter and summer. We would get an order from the Director at Washington that we must supply this manufacturing place. And those were the facts in the case of every Pennsylvania, West Virginia and Ohio company—I am now speaking of natural gas as a business. And consequently the gas pressure has decreased more rapidly than it would otherwise have done.

[fol. 582a] Q. But your policy has always been to get as much gas as possible from West Virginia and conserve your near-by Pennsylvania wells for the peak load?

A. For the peak load in the winter time.

Q. What is the relation between rock pressure and volume?

A. Well, we figure that as the pressure decreases the volume decreases accordingly, the amount of gas in the sand. That is the only known way we have of figuring or we had of figuring our available supply from year to year. We would shut in wells, a single well in each mile of territory we had and determine what the rock pressure was, by having it shut in all summer. In the winter time we would from that point try to find out just how much gas we had.

By Commissioner Reed:

Q. If you didn't have anything at all except rock pressure to guide you, that would be a very uncertain guide?

A. Well, we also had our observations and the open flow tests of every well when they would come in.

Cross-examination by Mr. Cunningham:

X Q. Mr. Pew, you as I understand it, represented the Peoples Company in negotiating this original contract in 1906 with Mr. Crawford and his associates as individuals, for the sale by the Peoples Company to them of gas to be used at Johnstown?

A. I did not altogether. Mr. C. N. Payne was our president.

X Q. Well, you were familiar——

[fol. 583a] A. I was familiar with the original contract and signed the original contract.

X Q. Well, you were familiar with the conditions with which the Peoples Natural Gas Company found itself at that time?

A. Yes, sir.

X Q. And you also negotiated the later contract of 1909, which as I understand it, superseded the contract of 1906?

A. I was one of the Peoples Company who did negotiate the second contract.

X Q. And the later contract of 1909 was made directly with the Johnstown Fuel Supply Company, it having been incorporated in the meantime? That is, between the dates of these two contracts?

A. Yes.

X Q. Now, going back to the original contract, when the Peoples Company first contemplated selling the gas to be consumed in Johnstown, how far east did your pipe lines then extend toward Johnstown?

A. At Derry, Pennsylvania?

X Q. And that is how many miles west of Johnstown?

A. If I recall, twelve miles; either twelve or fourteen, I won't say positively, on an air line. Am I right? I don't know that.

X Q. My object is, I want to see how many miles of pipe you laid. Now think of it in terms of pipe line rather than air line?

A. It is the air line I am talking about. We did not follow the river as the railroad did, we went straight across the hill and—(interrupted).

X Q. But presumably how many miles west?

[fol. 584a] A. As I recollect it, it is fourteen miles of pipe line. I am not sure. I may have answered that before when I knew exactly.

X Q. All right. We will say it will require the laying of at least fourteen miles of pipe line by the Peoples Company to furnish gas to be consumed at Johnstown wouldn't it?

A. Yes.

X Q. Now what sort of service were you rendering as far east as Derry at that time? I mean, were you supplying gas to domestic and the industrial consumers alike?

A. I do not get that.

X Q. Were you supplying gas for both domestic and industrial consumption in the territory west of Derry?

A. We were supplying gas at Latrobe, Derry, Greensburg and other smalls towns.

X Q. And in Pittsburgh?

A. And in Pittsburgh.

X Q. And at that time you were furnishing for domestic and industrial——

A. All that we could find for we had a large supply of gas.

X Q. Oh. You mean you were supplying everybody you could get to buy gas?

A. We certainly were.

X Q. You had an ample supply?

A. That is in 1906, yes.

X Q. And then pursuant to the application of Mr. Crawford and his associates for this contract, you laid your pipe line or extended your pipe line from Derry east towards Johnstown, didn't you?

[fol. 585a] A. After Mr. Crawford had made a contract with us for a supply of gas in Johnstown, we laid the line.

X Q. Well, you laid that line because you had that contract and to fulfill your part of the contract?

A. We certainly did.

X Q. Did you take on any consumers between Derry and Johnstown?

A. We may have at that time taken on a few domestic consumers along the line and later at some of the small towns.

X Q. The main purpose, however, of putting down that pipe or, I would say, extending your pipe from Derry eastward, was in order to get gas in the vicinity of Johnstown?

A. It was.

X Q. And you ran that pipe line to a point within some five hundred feet of the city limits of Johnstown?

A. We did.

X Q. Now when did you build what I would call a branch from that line on east to Altoona?

A. I cannot answer that from the year but I think that is already in the record.

X Q. I think it is, too; but approximately?

A. Well, I do not know.

X Q. Well, it was subsequent at least?

A. Yes; after 1906 of course.

X Q. Well then a contract of 1909 was made between the Peoples Company and the Johnstown Fuel Supply Company. Do you recall at that time whether your line went on to Altoona?

A. I am not sure whether before or after that. The record will tell you.

X Q. Do you remember the relative sizes of the lines from Derry [fol. 586a] to Johnstown and from a point on the Johnstown line to Altoona?

A. The line from Derry to Johnstown was 12 inch. The line

from Johnstown—the Johnstown line from Derry or Altoona is 14 inch, which is larger.

X Q. It is larger than the line from Derry to Johnstown?

A. Yes, it is.

X Q. At that time there was an artificial gas company in operathat right?

A. Well, I wish you would look at the record for my testimony is in on that. It is correct. I checked it up at the time.

X Q. Thirteen, it is?

A. Thirteen, then.

X Q. Where did the line from Altoona leave the line from Derry to Johnstown?

A. I think that is already in the record. I think back three miles west of Johnstown.

X Q. What was the purpose of that, Mr. Pew?

A. I imagine it was the most convenient place for us to lay a pipe line to. I know it was after surveying our right of way to Altoona, it was the most convenient place to connect on to it.

X Q. It is some distance west, the exact point is immaterial. Did you take on consumers between this point of junction with the Johnstown pipe line and Altoona?

A. Yes, I think we did, I know we did, along the line, some of those little towns.

X Q. Then you extended your pipe line to Altoona and that is the farthest point east that the line was laid, is it not?

[fol. 587a] A. Well, we also took in the next borough to Altoona.

X Q. You mean East of Altoona?

A. Yes. It is all one town.

X Q. But it is two boroughs?

A. What is the name? Is it Juniata? Yes, it is Juniata.

X Q. Then Juniata is the farthest point east?

A. Juniata is the farthest point east.

X Q. And did you sell gas in Juniata and Altoona? I mean did the Peoples Company distribute it there itself to the burner tips?

A. The Peoples Company distributed gas to the burner tips—to the meter rather.

X Q. You did not have any company in Altoona comparable to the Johnstown Fuel Supply Company at Johnstown?

A. No other Company supplying gas in Altoona as when we went there.

X Q. You supplied the town itself? You distributed a supply for industrial and domestic consumption in Altoona?

A. A very small amount of industrial. Entirely or nearly entirely for domestic.

I Q. At that time there was an artificial gas company in operation in Altoona, was there not?

A. There was.

X Q. Do you recall in getting a franchise in Altoona the pipes of your company had been laid largely in the alleys there because the streets were all occupied by the pipes of the local company?

A. No. I don't believe that was the case. I think the reason was that the streets were all paved and we thought it was more [fol. 588a] advantageous to lay the pipes in the alleys and cheaper than it was to tear up pavements and put in service that way.

X Q. As a matter of fact, a majority of the lines were in the alleys and as a matter of fact you at that time had an abundance of gas?

A. We thought we had an abundance of gas to take care of the requirements for some time.

X Q. When did you resign as president of the Peoples Company?

A. July 1st, 1918.

X Q. Will you please give the Commissioner some idea of the volume of gas which the Peoples Company was at that time carrying past Johnstown for the purpose of supplying its consumers in Altoona and Juniata?

By Mr. Gordon: That is objected to as irrelevant and not cross-examination.

By Commissioner Reed: We will receive the testimony subject to the objection.

A. You think the Company would be very glad to give you, Mr. Cunningham, the exact figures; I can only estimate it for I don't have it in my head.

X Q. Give it to us approximately?

A. Between one and five million a day, depending on the weather; probably five was a little high.

X Q. One to five million what?

A. Cubic feet of gas.

[fol. 589a] X Q. Cubic feet of gas taken past Johnstown to supply consumers east of Johnstown?

A. Yes. On cold days somewheres up to four or five million; summer time less than a million.

X Q. In view of your statement of the plans of the Peoples Company to conserve its supply, will you tell us when the greater quantity of gas brought to Johnstown and carried east to Altoona came from West Virginia, and when the greater part of it came from Pennsylvania?

A. The greater part of the gas came both summer and winter from West Virginia.

X Q. But all the time the pipe line had some gas in it produced in Pennsylvania?

A. All the time the pipe line had some gas in it produced in Pennsylvania, yes.

X Q. Well I understood you to say, Mr. Pew, that for the purpose of conserving Pennsylvania wells you at certain periods of the year brought a larger quantity from West Virginia than at others?

A. I did not say that. I said it has always been the policy of the Peoples Company to try to conserve their own gas by shutting in wells that were not offsets to competing companies and using them only when necessary in the cold weather; but a great many wells

were used on account of competing companies both summer and winter.

X Q. The peak load comes in the winter time, does it?

A. The peak load comes in cold weather, in the winter time.

X Q. Yes. And at that time you use more Pennsylvania gas than at off-peak loads, I understood?

A. How is that?

[fol. 590a] X Q. And at that time you would use more Pennsylvania gas; that is, a larger proportion of Pennsylvania gas, than you were using at off-peak times?

A. Yes. These particular wells that we were able to save we would use then.

X Q. Mr. Pew, will you tell us whether or not your company, the Peoples Company, required the Johnstown Fuel Supply Company to shut off or reduce the amount of gas supplied to the industrial consumers at Johnstown prior to the time you extended your line to Altoona?

A. I don't believe we did, although we might have on a cold day, or if we had some trouble. The natural gas business with long lines from West Virginia or Pennsylvania, a landslide or something of that sort, would cause us to be short for two or three days, although we might have a large amount of gas; but the practice was not, I believe, at that time to shut them off, for we had a large supply of gas.

X Q. Well, Mr. Pew, my question was not directed to that kind of a curtailment due to accidents or anything of that sort?

A. I call to mind, as I remember it, I don't believe that we had to shut off the manufacturing gas unless something unusual happened.

X Q. That is your recollection?

A. That is my recollection.

Cross-examination by Mr. McCahill:

X Q. As I understand, Mr. Pew, you had considerable to do with the negotiations of the first contract?

A. I would say not as much on that one as the second one. [fol. 591a] Mr. George Crawford (I did not know him at the time) first went to New York and talked to Mr. Payne, who was president, and spent most of his time in New York or around over the country, and to Mr. Dan O'Day, one of our directors. When they got along to a certain point in the matter then they took it up with me, the question of the gas supply and the contract and so on, but the first part of the negotiation was with Mr. Payne.

X Q. You were president of the Peoples Company at that time?

A. I was not; I was vice president.

X Q. Were you in active charge of the Pittsburgh district?

A. I was in active charge of the Pittsburgh district from 1903 on.

X Q. You were familiar with the location of the pipe lines of the Peoples Natural Gas Company and the communities which were being served at that time?

A. I was.

X Q. Between Pittsburgh say and Derry the territory was fairly well saturated with service lines, wasn't it? By that I mean, you were furnishing nearly all the towns through which you passed?

A. No, we did not. We did not supply Greensburg. We did not supply Braddock, Wilmerding, East Pittsburgh, or any of those towns along the Pennsylvania Railroad or McKeesport, until we reached Greensburg. They were supplied with natural gas by the Philadelphia and other companies.

X Q. So that the territory say to Derry was saturated with natural gas supplied either by yourselves or some other operating company? [fol. 592a] A. Some company supplied all the towns of any importance between Pittsburgh and Derry. Some company did.

X Q. That was up to 1906, when the first contract was made?

A. Yes.

X Q. Was there ever any discussion between yourself and any of the officers of the United Natural Gas Company or later the Johnstown Fuel Supply Company with reference to the company which was to distribute natural gas in Johnstown developing its own field and bringing its own gas to Johnstown?

A. No. I don't know why there would be any occasion for that up until the time—(interrupted).

X Q. What do you mean by that?

A. Up until the time that the United Fuel, the successors of George Crawford and others in the Johnstown Fuel Supply Company as first organized, sold out, we knew that we had enough gas to take care of them, there was no occasion for any discussion; but we did also know that they had applied for and received a state charter.

X Q. But did you know whether or not they ever expected to use or intended to use the provisions of the charter with reference to developing a supply?

A. I think if I had been in their place and ten years had gone around and they didn't have any gas, I would have found gas. They had the right to do it and they are gas people.

X Q. Now, then, would that have been a feasible thing to do considering the fact that from Derry west the territory was well saturated with a supply, all over, of natural gas? [fol. 593a] A. We talked, from West Virginia, of taking a line from West Virginia to Altoona and clear through as far as Philadelphia, after 1906.

X Q. But you would expect, would you not, to supply a portion of that on the way?

A. They could have done the same thing. In other words, they were not restricted. They could have gone to Altoona and gone to Cumberland and could have brought a line from West Virginia and continued it. We also took up a right of way from Baltimore in 1906—I am talking about companies I was connected with, not the Peoples; and there was a supply of gas after 1906. We could have laid a line if we had got a franchise in Baltimore. We spent a lot of money for franchises. I am talking about companies that I was connected with, as I said.

X Q. That would be entirely out of the question, however, for a company the size of the Johnstown Fuel with only an authorized capital stock of $300,000?

A. The Johnstown Fuel Supply Company Mr. George Crawford, Mr. Treat and his associates back of him, could lay a line to New York if they had wanted to do so. I am speaking now of the corporate assets of the Johnstown Fuel Supply Company. They could have made them anything they wanted to. The Peoples' assets at one time were less than a million dollars.

X Q. I am asking you with reference to the actual facts. It is not a question of what money they could have raised, but with an authorized capital stock of $300,000 you wouldn't say it would be feasible at all to carry a line such a length?

A. No, not with an authorized capital stock of $300,000 they [fol. 594a] could not; but there was nothing to prevent them from increasing it.

X Q. As I understand from you, Mr. Pew, the Peoples Natural Gas Company are doing and have done everything that good business dictates they should do in order to provide an adequate supply of natural gas?

A. I believe they have.

X Q. That is true of the field in Pennsylvania, is it?

A. Unless they find new fields, yes.

X Q. Do you know of any parts of Western Pennsylvania that have not been explored for new fields?

A. There is more or less in Cambria County, Somerset County; there has been some drilling done. Whether or not there is gas there only the drilling there will tell, but I personally do not believe it is good territory.

X Q. So that, so far as you know, there is no part of Western Pennsylvania that has not been prospected for gas where there is a possibility of finding a gas deposit?

A. If you will not make that a gas possibility, I will answer your question by saying yes, there is always a possibility of finding gas or oil by the drill. It is not a good business venture today. Does that answer your question?

X Q. Say a probability instead of a possibility?

A. Yes.

X Q. As I understand, Mr. Pew, you had considerable to do with the negotiation of the contract of 1909?

A. Well, I had some part.

X Q. And you are familiar with the provision of that contract [fol. 595a] provided for in paragraph 5, which I will read to you:

"The Buyer will during the continuance of this contract, purchase and take from the Seller all the natural gas required to supply its customers paying domestic rates up to the capacity of the existing twelve inch pipe line, Derry to Johnstown, except as herein provided."

Under that provision the Johnstown Fuel Supply Company was required to take all the gas which it distributed in Johnstown from

the Peoples Natural Gas Company to the extent of the capacity of your pipe line, so long as this contract remained in existence. Is that a fact?

A. Yes.

X Q. So while this contract was in existence the Johnstown Fuel Supply Company could not go out and develop an independent supply and carry it into Johnstown for distribution?

A. That is objected to as not a fair statement of the contract because the contract provides that if we did not furnish an adequate supply, they would.

X Q. Well, Mr. Pew, so long as the Peoples Natural Gas Company had a supply and wanted to sell it to the Johnstown Fuel Supply Company, the contract speaks for itself. It says that. And you had something to do with the negotiation for that company?

A. Yes. Do you want to know why we wanted that put in there?

X Q. Yes. Why?

A. Well, you had an artificial gas company in there.

[fol. 596a] X Q. In Johnstown, you mean?

A. In Johnstown. We wanted you to either supply one or the other. We didn't want you to operate your artificial plant and not take natural gas consumers. We laid our pipe line over there for the purpose of supplying them.

X Q. Then you are also familiar, Mr. Pew, with the provisions of section 9, which requires the Johnstown Fuel Supply Company as far as it can to put the artificial gas consumers on to the pipe line furnishing natural gas?

A. Yes.

X Q. And you assisted in negotiating that provision of the contract, I presume?

A. We certainly did.

X Q. And——

A. May I go a little farther in my answer? We had laid a pipe line across the mountains a short distance and put in an investment, expecting to supply natural gas to all the consumers; we didn't know but what the new consumers might not make any more than expenses, and our investment might possibly be unprofitable, consequently we wanted them to turn the artificial consumers over and have them buy natural gas, and we put in that clause.

X Q. And the contract says so long as it is lawful to do that the Johnstown Company are obliged to supply gas to even those who are using artificial gas?

A. If they would take it, yes.

X Q. And following up that provision of the contract the Peoples Natural Gas Company insisted from time to time that the Johnstown Fuel Supply Company should push the sale of natural [fol. 597a] gas and do their utmost to turn over to the natural gas system those customers who had heretofore received artificial gas?

A. We did that for a long time after we first took care of that property.

X Q. I show you a letter, Mr. Pew. Did you sign that?

By Mr. Cunningham: Understand, Mr. Commissioner, I suggested to Mr. Gordon that if I were permitted to ask a few questions which are not strictly cross-examination it might avoid the necessity of having Mr. Pew come back some other time.

A. Yes. I signed that letter and wrote it in 1912.

By Mr. Cunningham: We will offer this letter and ask to have it marked Exhibit D-2. It will be a part of our case. It is on the stationery of the Peoples Natural Gas Company, dated Pittsburgh, Pa., July 18, 1912.

Mr. H. H. Weaver, Vice President Citizens Light, Heat & Power Company of Pennsylvania, Johnstown, Pa.

DEAR SIR: I have your letter of July thirteenth. We will have to insist on your paying the rate designated in the contract unless you can show that you will very soon have the number of consumers you agreed to have. By putting your artificial consumers on [fol. 598a] natural gas I believe that you would be able to do this.

Yours truly, John G. Pew, Vice President.

X Q. That Exhibit D-2 was written and signed by you?

A. It was written by me and signed by me.

X Q. I now show you, Mr. Pew, Exhibit D-3 and ask you if that letter was written and signed by you?

A. That letter was written by me and signed by me.

By Mr. Cunningham: We will offer this letter, marked Exhibit D-3 as part of our case. It is on the stationery of the Peoples Natural Gas Company, dated Pittsburgh, Pa., July 19, 1912.

Mr. H. H. Weaver, Vice President Citizens Light, Heat & Power Co. of Pennsylvania, Johnstown, Pa.

DEAR SIR: I am mailing you a statement showing the number of complaints in Johnstown made by the inspectors. I believe that all of these reports have been turned over to your manager and likely taken care of. What are you doing in regard to the question of shutting down your artificial plant and putting natural gas in your entire plant? When I was there you hoped to have council give you the right to shut down the artificial plant and still retain your right to do business. When you have been able to do this [fol. 599a] it will improve the natural gas conditions in Johnstown.

Yours very truly, John G. Pew, Vice President."

By Mr. Gordon: We object to the two letters, Exhibits D-2 and D-3 as irrelevant and incompetent.

By Commissioner Reed: We will receive them subject to objection.

X Q. As I understand, Mr. Pew, you constantly urged the Johnstown Fuel Supply Company to get all of their artificial gas con-

sumers on to the Natural Gas Company's mains and to shut down their artificial plant?

A. You realize, Mr. Cunningham, that when we made our contract—(interrupted).

X Q. Just a minute. Let me have your answer first, yes or no, and then explain.

A. Yes.

By Mr. Gordon:

X Q. Now make your explanation, Mr. Pew.

A. You realize that when we made the contract with Mr. Crawford and his associates we expected them to pipe the town of Johnstown and that we would have about ten thousand domestic consumers eventually on the plant. They had, as I recall, something over three thousand or three thousand five hundred consumers when the combination was effected. We were dissatisfied with the amount of gas that was being sold from that time on, and we repeatedly [fol. 600a] asked you to add additional consumers and to sell appliances at a price so that consumers would buy more gas. The amount of gas that was going to the consumer in Johnstown was away below any other place in the United States that I know of. That is, the amount of gas used or burned per consumer was away below any other town that we knew of and we repeatedly urged you to get more consumers on and supply them with appliances so that they would burn gas. And we had our investment across the hills we wanted to make something out of.

By Mr. McCahill:

X Q. That applied to consumers of artificial gas?

A. We didn't care what they were, but that they should be consumers in Johnstown.

By Mr. Cunningham:

X Q. And do you know whether or not the Johnstown Fuel Supply Company did finally get all of their artificial gas consumers on to the natural gas plant?

A. They got the majority, I think, if not all of them. I am not positive about that. I believe when I left you were still making a little gas for the steel plant.

By Mr. McCahill:

X Q. Now, Mr. Pew, are you familiar with section 23 of the contract of August 12, 1919, which applies to the restriction of territory? If not, I will be glad to read it to you?

A. I am familiar with it, yes; Johnstown and vicinity.

[fol. 601a] X Q. That paragraph also contains this sub-paragraph:

"The seller agrees during the life of this agreement that it will not (without the written consent of the Buyer) sell or deliver or

contract to sell or deliver to anyone other than the Buyer, any natural gas for use, or that may be used or consumed within said territory; and it is further agreed that if at any time during the life of this agreement the Buyer gives notice to the Seller that any natural gas produced or transported or delivered by the Seller (other than that sold and delivered to the Buyer by it) is being used or consumed in any part of said territory, and if such use or consumption of such natural gas by any person or corporation continues for more than thirty days after the receipt of such written notice by the Seller, the Seller agrees and shall be bound to pay to the Buyer twenty-five cents per thousand cubic feet for such natural gas so used or consumed within said territory after the said period of thirty days. And it is expressly agreed that the Seller shall at all events and under all circumstances and irrespective of the continuance of this Agreement or service hereunder, remain bound until August 12th, 1939 (save only in the single case of the prior termination of this Agreement on account of default of the Buyer), by all obligations of this Paragraph 23 with regard to keeping all natural gas produced, transported or delivered by it from use, consumption or sale in said territory.

The territory which it is contemplated the Buyer shall have the right to supply with natural gas to be supplied by the Seller here- [fol. 602a] under, shall be the City of Johnstown, as the same may now or hereafter exist, and the following described territory outside of the City, namely: Borough of Westmont, Village of Walnut Grove, Borough of Franklin, Borough of East Conemaugh, Borough of Dale, Borough of Ferndale, Upper Yoder Township, Lower Yoder Township, Stonycreek Township."

Now as I understand from you, Mr. Pew, so far as you know, there is no field in Western Pennsylvania which it is practicable for the Peoples Natural Gas Company to attempt to develop now? And I assume if it is not practicable for the Peoples Natural Gas Company to develop that it will not be practicable for the Johnstown Fuel Supply Company to try to. That if the supply of natural gas is terminated as far as the Peoples Natural Gas Company is concerned, and no further gas delivered by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company for distribution in Johnstown, that under this paragraph of this contract (and this contract still holds good) and that paragraph that the citizens of Johnstown must do without natural gas. Do you know of any way in which they can secure natural gas, in view of this paragraph of this contract, in view of your previous testimony as to the available fields in Pennsylvania, if the Peoples Natural Gas Company discontinued?

A. You made that just a little strong, I think. Of course the Peoples Natural Gas Company will drill wells I believe in Pennsylvania for the next twenty years in what is now known territory, and they may find new territory. For your information, since I left [fol. 603a] they have found deeper gas up back of Ligonier. Now, what that will amount to I do not know, but in my opinion, there

is not an available supply of gas today that you could just at the present time lay your hands on, to get gas from.

X Q. Now, Mr. Pew, wherever there is, say a possibility of there being a deposit of gas, isn't it true that either the Peoples Natural Gas Company or some of the other larger gas companies have gas leases, perhaps for a long term of years, controlling that available supply, even though they haven ot drilled on it?

A. I would say no to that question. If I had your investment in Johnstown I would drill a very deep gas well right near Johnstown, if the territory is not taken up. We tried to get it, but couldn't get it.

X Q. But you haven't any assurance that there is any gas there?

A. No. In my opinion there is gas there. We have the same opinion about Ligonier and we were able to get the field, but there is apparently a very strong rock pressure and evidently a field. I may be telling secrets that I ought not to tell—I am not here now.

X Q. Now, Mr. Pew, you have always, summer and winter, furnished some gas to industrial consumers.

A. On some cold days in the winter time the gas has been shut off I would say nearly in entirety to manufacturing consumers. There are some places where you cannot absolutely shut it off or you would destroy very valuable property; but they have been shut down and the men have been sent home and no gas supplied except enough to keep open hearth furnaces and such as that warm.

[fol. 604a] X Q. That is only temporarily, however?

A. That is on account of shortage on very severe days.

X Q. But judging an average winter, such as we had in 1919, if you recall, you did furnish between two and three billion cubic feet per day to industrials in Pittsburgh?

A. I was not here and I could not answer that question.

X Q. I beg pardon. I was thinking that was the year before you left.

A. You will have to ask me questions before 1918.

X Q. How about 1917?

A. During the year 1917 we supplied gas on account of the war night and day and Sundays. Our domestic consumers were short, but the manufacturers ran because we would get an order from Washington to let them run.

X Q. I remember seeing your chart and you did have a high industrial consumption in 1917 and 1918, as I remember?

A. We didn't want to, but we had to, on account of the war.

X Q. And during that time you furnished gas at Altoona and at Johnstown to industrials?

A. Yes; but the domestic consumers were short during that time both at Altoona and Johnstown.

X Q. The Peoples Natural Gas Company has no interest in the artificial plant at Altoona, have they?

A. No interest whatever.

X Q. And there is no co-operation between the two, the artificial plant and the natural gas company?

A. No co-operation at all. They do have a right, however, from [fol. 605a] the City of Altoona that when natural gas becomes short to supply a mixed gas, subject to the Commission's approval, or an artificial gas. We did not feel at the time we made that investment that we wanted to depend entirely on natural gas.

X Q. Do you know anything about the condition of the artificial plant at Altoona?

A. I do not.

Further hearing of this case continued the second week of September, 1921, in Pittsburgh. Pittsburgh, Pa., July 6, 1921.

CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript of my stenographic notes taken in the above entitled cause.

Suzanne S. Beatty, W., Reporter.

[fol. 606a] **Offers in Evidence**

[Title omitted]

Present:

Hon. John W. Reed, Commissioner of the Public Service Commission of the Commonwealth of Pennsylvania, Harrisburg.

George B. Gordon, Esq., and Allen T. C. Gordon, Esq., (of Gordon & Smith), 1561 Frick Annex, and Arthur E. Young, Esq., 545 Wm. Penn Place, Pittsburgh, Pa., for the Peoples Natural Gas Company.

[fol. 607a] David I. McCahill, Esq., (of McCahill and McCahill), West Penn Building, Pittsburgh, for Johnstown Fuel Supply Company.

Tillman K. Saylor Esq., City Solicitor of Johnstown, Pa., for Louis Franke, Mayor, Complainant at No. 1098, and Cambria Steel Company, Complainant at No. 1083.

Hon. J. E. B. Cunningham of Harrisburg, with Mr. Saylor, for for Complainant, Louis Franke, Mayor, C-1098.

This cause came on to be heard before the Public Service Commission in Pittsburgh, September 8th, 1921, before the Hon. John W. Reed, Sitting Commissioner.

Counsel were present as indicated and these proceedings were had:

Counsel for the Peoples Natural Gas Company, one of the Respondents offered in evidence the following records and papers:

(1) Exhibit J-11 which is a copy of the statement of claim in the case of the Peoples Natural Gas Company against the Johnstown Fuel Supply Company at No. 345 June Term, 1921, in the Court of Common Pleas of Cambria County, Pennsylvania.

(2) Exhibit J-12 which is a copy of the affidavit of defense of

the Johnstown Fuel Supply Company in No. 345 June Term, 1921 in the Court of Common Pleas of Cambria County, Pennsylvania. [fol. 608a] Counsel for the City of Johnstown objects to Exhibits J-11 and J-12 on the ground that those records are incompetent, irrelevant and immaterial.

By Commissioner Reed: They will be received for the present, subject to the objection.

(3) Counsel for the Peoples Natural Gas Company offers Exhibit J-13 which is a certified copy, under the seal of the Secretary of the Commonwealth of Pennsylvania, of an amendment to the charter of the Peoples Natural Gas Company, excluding therefrom the City of Johnstown and certain adjacent boroughs and also altering the route of its pipe lines by surrendering and abandoning certain lines specified which were used to supply that territory. The amendment to the charter having been filed in the office of the Secretary of the Commonwealth on the 27th day of January, 1921, and being recorded in the Recorder's office of Cambria County on the 29th day of January, 1921, in Deed Book Volume 331 at page 54.

Counsel for the City of Johnstown and for the Johnstown Fuel Supply Company respectfully object to the offer of Exhibit J-13, for the reason that the proposed amendment to the charter of the Peoples Natural Gas Company and abandonment of the part of the route of the Company has not even been presented to the Public Service Commission of the Commonwealth of Pennsylvania for its consideration or approval.

By Commissioner Reed: That raises a legal question which I presume will have to be threshed out as to whether the Company [fol. 609a] can curtail its field of supply by simply filing an amendment without the approval of the Commission. The offer will be admitted for the present subject to the objection.

(4) Counsel for the Peoples Natural Gas Company offer in evidence Exhibit J-14 being a letter from that company to Johnstown Fuel Supply Company, dated July 25th, 1919, advising that the contract between the two companies would be terminated on the first day of October, 1920, and the supply of natural gas be entirely discontinued on that date, as follows:

EXHIBIT J-14

"Johnstown Fuel Supply Co., Johnstown, Penna.

GENTLEMEN:—Attention P. J. Morrissey, Gen. Mgr.

It is provided in the 2nd and 3rd articles of the written agreement dated August 14th, 1909, between The Peoples Natural Gas Company, termed the Seller and Johnstown Fuel Supply Company, termed the Buyer, that the Seller may terminate the deliveries of gas to the Buyer on giving written notice.

The available supply of gas has been diminishing with such rapidity in the past few years that this Company does not have enough gas to satisfy the requirement of consumers directly con-

nected with its plants; the shortage will be marked in the coming [fol. 610a] winter, if it should be an average winter, as each month sees a further decline in the available supply.

Under the circumstances this Company deems it advisable to give your Company written notice that the supply of natural gas to your Company will be entirely discontinued on and after the first day of October, 1920, at which time this Company desires that the contract relations between the Companies shall terminate.

More than twelve months' notice is given, in order that ample time may be allowed your Company to rehabilitate its artificial gas works or to take such other steps as it may desire.

I take this occasion also of again calling your attention to the money which your company owes this company, and request that you make prompt payment of the bills which have been rendered, and which now amount to a very considerable sum.

The Peoples Natural Gas Company, (Sgd.) John B. Tonkin, Vice President."

(5) Counsel for the Peoples Natural Gas Company, Respondent, offer in evidence Exhibit J-15, which is a letter of the Johnstown Fuel Supply Company to the Peoples Natural Gas Company, dated August 25, 1919, acknowledging receipt of the letter Exhibit J-14 and asserting that the Johnstown Fuel Supply Company would not recognize the right of the Peoples Company to discontinue, as follows:

[fol. 611a] EXHIBIT J-15

"Peoples Natural Gas Company, 424 Sixth Avenue, Pittsburgh, Penna.

GENTLEMEN: Your letter of July 25, 1919, was received by me under date of August 14, 1919.

Under the present circumstances the Johnstown Fuel Supply Company does not recognize the right of the Peoples Natural Gas Company to discontinue its public obligation of furnishing the City of Johnstown and its inhabitants with a supply of natural gas for their use.

The Johnstown Fuel Supply Company must also at this time again dispute your statement that this company is indebted to you other than for current accounts.

Yours very truly, (Sgd.) P. J. Morrissey."

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(6) Counsel for The Peoples Natural Gas Company, respondent, offer in evidence Exhibit J-16 being a copy of letter of the Peoples Natural Gas Company to the City Solicitor of Johnstown, Tillman K Saylor, dated August 26th, 1919, and enclosing a copy of Exhibit J-14 and stating that it was sent to him so that the Mayor and consumers of natural gas in Johnstown should be advised of the proposed action of the Peoples Natural Gas Company, as follows:

[fol. 612a] EXHIBIT J-16

August 26, 1919.

Tillman K. Saylor, Esq., City Solicitor, Johnstown, Penna.

DEAR SIR: I have no doubt but that Mr. Morrissey has already acquainted you with the action which The Peoples Natural Gas Company has taken, giving written notice to the Johnstown Fuel Supply Company of the termination of natural gas service taking effect October 1, 1920.

In order that you may have knowledge of the matter to communicate to the Mayor and to consumers of Natural gas, I am enclosing herewith a copy of notice which is dated July 25th, 1919 and Mr. Morrissey's reply which is dated August 25th, 1919.

The Peoples Natural Gas Company, (Sgd.) by J. B. Tonkin, Vice President."

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(7) Counsel for the Peoples Natural Gas Company offer in evidence Exhibit J-17 being Supplement No. 2 to P. S. C. Pa. No. 7, and being the supplementary tariff which was filed by the Company pursuant to the order of the Public Service Commission as follows:

[fol. 613a] EXHIBIT J-17

"Supplement No. 2 to P. S. C. Pa. No. 7

The Peoples Natural Gas Company, Pittsburgh, Pennsylvania

Whereas, an order of The Public Service Commission of the Commonwealth of Pennsylvania, entered on the 4th day of December, 1917, in the following two cases, viz:

Louis Franke vs. Johnstown Fuel Supply Company, Complaint Docket No. 1098-1916;

Cambria Steel Company vs. Johnstown Fuel Supply Company, Complaint Docket No. 1083-1916,

requires The Peoples Natural Gas Company to file, post and publish according to law its tariff and schedule of rates covering the service complained of in the above complaints, within fifteen days after the service of the order, and appeals in said cases dismissed as premature by an order of the Supreme Court of the Commonwealth of Pennsylvania, June 26, 1920;

The Peoples Natural Gas Company now protests against the said order of The Public Service Commission of Pennsylvania in said cases, and against its enforcement, and in support of this protest says that The Public Service Commission of Pennsylvania is without jurisdiction to make said order for the reason that the relationship between The Peoples Natural Gas Company and the Johnstown Fuel Supply Company does not constitute a public service and is not [fol. 614a] within the jurisdiction of the Commission as conferred by the laws of the State of Pennsylvania, and for the further reason

that the transportation, sale and delivery of the gas referred to in said order constitutes interstate and not intrastate commerce, and that this Commission is without jurisdiction to make any orders with reference thereto. Without waiving this protest, but at all times insisting upon the same, The Peoples Natural Gas Company in compliance with said order now hereby files, subject to the notice of termination hereinafter set forth, a copy of the written contract between The Peoples Natural Gas Company and the Johnstown Fuel Supply Company, dated the 12th day of August, 1909; said copy is attached hereto marked "Exhibit No. 1."

Notice is also hereby given that The Peoples Natural Gas Company has elected to terminate deliveries of natural gas to the Johnstown Fuel Supply Company on the first day of October 1920, and in accordance with the second and third articles of the agreement dated August 12, 1909, between said companies, has given written notice to the Johnstown Fuel Supply Company of said termination; a copy of said notice is attached hereto, marked "Exhibit 2."

John B. Tonkin, Vice. Pres., 545 William Penn Way, Pittsburgh, Pa.

Issued by Order of the Public Service Commission of Pennsylvania, No. 1098-1916 and No. 1083-1916, Dec. 4, 1917.

[fol. 615a] (Copy of agreement dated August 12, 1909 between the Peoples Natural Gas Company and Johnstown Fuel Supply Company and also copy of letter July 25, 1919, Exhibit J-14 in this hearing, attached to Exhibit J-17.)

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(8) Counsel for Peoples Natural Gas Company offer in evidence Exhibit J-18 being a copy of the letter of that company to the Johnstown Fuel Supply Company dated March 24, 1920 in which the Peoples Natural Gas Company again call attention to this notice to terminate and ask what steps the Johnstown Company will take to provide for the situation, as follows:

EXHIBIT J-18

March 24, 1920.

Mr. P. J. Morrissey, Gen. Mgr. Johnstown Fuel Supply Co., Johnstown, Pa.

DEAR SIR: We have heard nothing from you in response to the letter of July 25, 1919, concerning the termination of natural gas deliveries to the Johnstown Fuel Supply Company, October 1, 1920. Owing to good fortune in obtaining large quantities of gas from the McKeesport field, we were able to carry you through the winter with fair service, but the McKeesport field is now vanishing so rapidly that the condition of the natural gas supply for the coming winter is a very serious matter. I am therefore now writing you to call your attention again to the notice which was given you and

to inquire what steps you are arranging to take care of the situation. [fols. 616a-620a] I am also writing to City Solicitor Saylor because of the public interest affected by the termination of the contract.

Yours very truly, Christy Payne."

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(9) Counsel for Peoples Natural Gas Company offer in evidence Exhibit J-19 being a letter dated March 24th, 1920, from that Company to the City Solicitor of Johnstown, Tillman K. Saylor, Esq., again calling attention to its notice to the Johnstown Fuel Supply Company to discontinue the supply of natural gas October 1, 1920, as follows:

EXHIBIT J-19

"March 24, 1920.

Tillman K. Saylor, Esq., City Solicitor, Johnstown, Pa.

DEAR SIR: I am writing again today to the Johnstown Fuel Supply Company to inquire what that company is doing to take care of its consumers on and after October 1, 1920. You will recall that notice has been given to the Johnstown Fuel Supply Company and I call to your attention that we will discontinue the supply of natural gas on that date. The public welfare may be seriously affected if the Johnstown Fuel Supply Company does not take prompt steps to obtain a substitute fuel.

Yours very truly, Christy Payne."

[fol. 621a] TESTIMONY OF MR. JOHN B. TONKIN

Mr. JOHN B. TONKIN, called on behalf of the Peoples Natural Gas Company and duly sworn, testified as follows in response to:

Direct examination by Mr. George B. Gordon:

Q. Where do you live Mr. Tonkin?

A. In Pittsburgh.

Q. What is your business?

[fol. 622a] A. I am Vice President and General Manager of the Peoples Natural Gas Company.

Q. And do you have charge of the production and distribution of natural gas?

A. I do.

Q. That is under your direct supervision?

A. It is.

Q. I wish you yould state what the present situation of the Peoples Natural Gas Company as to its ability, in your judgment, to furnish an adequate supply of natural gas during the coming winter to all its customers in times of severe cold?

A. We have been short of gas during the cold spells for the last

several years and the supply of gas has been getting shorter all the time. What gas has been developed has not kept up with the decline of the old fields, with the temporary exception of the McKeesport field; so that we have less gas available each year and the chances of shortage are very much greater all the time. We would have had a very severe shortage last year if the weather had been normal but when it was cold it was only cold for a day or two at a time and allowed us to build up pressures before shortages were badly felt, although we did have shortages last year. If the weather is normal this year we will certainly have shortages of gas this year and they will probably be severe.

Q. Now what would be the effect upon the Peoples Natural Gas Company if they would be compelled to continue to supply Johnstown?

A. Well it spreads the shortage around and makes the shortage just that much more acute. If we did not furnish that gas we would [fol. 623a] have the gas that is now being furnished to Johnstown available to our own consumers.

Q. Even cutting off Johnstown would you, in your judgment, have an adequate supply?

A. No, we would not have an adequate supply. It would help out at a point very badly needed, though, of our own consumers down on the Altoona line. Altoona usually is the first place to feel the shortage, being at the end of the line, and by shutting off Johnstown we would be able to give our own consumers considerably better service.

Q. What was the reason, Mr. Tonkin that led your company to give this notice of the termination of the Johnstown contract and also to apply for an amendment of your charter excluding that territory?

A. We felt that we should take care of our own consumers before taking care of the consumers of other companies.

Q. What is your opinion as to the chances of the future in the natural gas business?

By Mr. George B. Gordon: I don't want to lead the witness and still I do want to direct his attention to what I have in mind.

By Mr. McCahill: Go ahead.

Q. (continued). What I have in mind, Mr. Tonkin, is whether in order to give an adequate supply of natural gas it is going to be necessary to supplement natural gas with manufactured gas of some kind?

[fol. 624a] A. We will have to gradually mix it before long and gradually supplement the supply.

Q. And in order to do that I suppose you will naturally have to go into the manufacture of some kind of gas yourselves in order to keep up the supply?

A. Yes.

Q. And that requires an additional cost of course?

A. Yes.

Cross-examination by Mr. McCahill, representing the Johnstown Fuel Supply Company:

X Q. Mr. Tonkin do you know how much gas was supplied to industrial consumers throughout your entire territory during this last winter?

A. During the last winter? There was very little supplied, during the last winter, in fact we notified the industrial consumers to get off our lines, I will not say positively whether that was in November or September 1st, I think it was not later than November 1st. There were a few essentials that we furnished after that but very few.

X Q. Did you notify them to get off, or to be in position to get off?

A. I think it was to get off.

X Q. Have you copies of those notices?

A. I think we have.

X Q. Will you procure or get for this meeting or for the next meeting a copy of one of those typical notices?

A. Yes.

X Q. Mr. Tonkin do you have a chart or figures showing the [fol. 625a] amount of gas which was actually delivered by your company to industrials during this last winter?

A. I think we have, yes, sir.

X Q. Will you furnish that chart?

A. I am not sure that we have one for this last winter; I saw one for the winter of 1920, showing the days that the industrials were off and the days that they were on. I am not sure that we have a chart for the last winter, however.

X Q. You would have the figures, however, showing the amount of gas furnished during the winter of 1920-21 to industrial consumers in your entire territory?

A. Yes.

X Q. Will you give us a copy of those figures?

A. Yes.

X Q. Mr. Tonkin do you know how much gas is being furnished in Johnstown for heat purposes?

A. No, I do not.

X Q. You know as a matter of fact, however, that a very small amount is used for heating purposes, the great amount of gas in Johnstown being used for cooking and lighting purposes?

A. Well something has happened to Johnstown recently so that the consumption of gas has come up considerably to what it was before. Whether they are putting their heating appliances on I do not know but they are being furnished more per domestic consumer than for a number of years before or ever before.

X Q. You don't know Mr. Tonkin then how much your supply would be increased for distribution to other consumers if all the [fol. 626a] consumers in Johnstown that are using natural gas for heating purposes were cut off, do you?

A. No. I would know about what would be available if it were all cut off for all purposes.

X Q. Well what do you think it would be?

A. Well about eighty thousand per consumer, that is per year, and then they had in the neighborhood, I believe of ten thousand consumers: eight hundred million feet I think.

X Q. Do you know the consumption of gas in Johnstown as compared with the consumption of natural gas in Altoona?

A. Yes, sir.

X Q. How does Altoona compare with Johnstown for consumption?

A. Altoona is considerably less. I think it is about sixty-five in Altoona as against eighty in Johnstown. I can give you some more recent figures.

By Commissioner Reed:

Q. And how about the number of consumers?

A. The number of consumers is pretty nearly the same; I think there is one thousand and some more in Altoona; but the average in Altoona was seventy-three thousand as against eighty-two thousand in Johnstown, that is per consumer for the year.

By Mr. McCahill:

X Q. Do you have the figures there, Mr. Tonkin showing the total number of cubic feet delivered to Altoona say for a current year?

A. I haven't that with me.

X Q. Could you furnish those figures?

A. I could.

[fol. 627a] X Q. Say for the year 1920?

A. Very well.

X Q. Mr. Tonkin will you, if you don't have the figures there, will you furnish figures for the record showing the total average daily supply of gas for domestic purposes and for industrial purposes separately for the year 1920 and the average daily amount delivered to Johnstown during the year 1920?

A. You are bringing in the year 1920 and that is hardly along what I spoke of; I spoke of the winter of 1920 and 1921. The year 1920—(Interrupted.)

Q. Arrange it for convenient date for bookkeeping purposes.

A. What I wanted to explain was that for the year 1920, the first of the year we handled pretty nearly five billion feet out at McKeesport and we did sell to manufacturers and sold from January on through to March, the manufacturers with very little interruption at that time. It was a temporary situation which did not exist long—which did not exist before and will not exist again.

Q. Give us the figures for 1919.

By Mr. George B. Gordon: We object to that; let them make their own tabulations.

By Mr. McCahill: It is the total distribution to Johnstown and the total distribution of industrial and domestic gas in other parts of the system.

Q. You can get those figures, Mr. Tonkin, say for 1919 if you state 1920 is not a fair test of figures?
[fol. 628a] A. 1919 is not a fair test either.
Q. Why?
A. Because there were five billion feet taken out of McKeesport that cannot come again and put into the 1919 business.
Q. You say there were five billion feet of natural gas?
A. Through our system. There were over five billion feet of gas put into the system and sold in 1919 and there were about five billion feet sold in 1920. That had to be taken care of the latter part of 1919 and the first part of 1920, when it was available.

By Commissioner Reed:

Q. I understand you have the figures available for 1920 and 1921?
A. Yes. I have those.

By Mr. McCahill:

X Q. They were not influenced by the McKeesport field?
A. No.
X Q. Then let us have those?
A. Very well.
X Q. The Peoples Natural Gas Company, Mr. Tonkin I understood you to say, or your predecessor, Mr. John G. Pew, is doing everything feasible that it can do to produce natural gas where it is available; is that correct?
A. That is correct.
X Q. Do you have any leases in Cambria county at present?
A. We do not.
[fol. 629a] X Q. Have you any leases in Cambria County at present?
A. We do not.
X Q. Did you have any leases that have been surrendered?
A. We had a few, not very many.
X Q. Did you make any tests or drill any test holes in Cambria County, to speak of?
A. Not since I have been connected with the company. I believe there were a couple of tests out in that neighborhood somewhere, whether it was in Cambria County I do not know, I don't remember.
X Q. Do you know about when they were made?
A. No, I do not.
X Q. Are there any other fields in Pennsylvania that you know of where natuarl gas could be produced, where it is not now being produced, that you know of?
A. Not that I know of.
X Q. And your company makes an effort to locate all probable fields and of course to produce natural gas?
A. In the neighborhood of our lines, yes.
X Q. Then it is a fact, is it not, Mr. Tonkin that if the Johnstown Fuel Supply Company or the citizens of Johnstown don't get natural

gas from the Peoples Natural Gas Company there is no other available supply at this time, is there?

A. I don't know of any other source of supply no.

X Q. And they would be obliged to resort to artificial gas or to some other method of heating?

A. Or drilling.

X Q. You don't know of any such fields in which to drill?

[fol. 630a] A. No.

X Q. If you knew of any such fields the Peoples Natural Gas Company would drill for gas?

A. I don't know. The way we find such fields is to drill for them.

X Q. Well Mr. Tonkin do I understand you to say that the Peoples Natural Gas Company have any definite plan either in the making or worked out looking to the mixing of artificial with natural gas, or is that just something imaginary in the future?

A. No, it is not imaginary. Our engineers are working at it now, have been for some little time, investigating the best method, what gases have been mixed, and so forth.

X Q. Have they gone far enough so that you are prepared to say that you think it is a feasible thing to do?

A. Absolutely.

X Q. And that that can be done?

A. Yes, sir.

X Q. And that as the natural gas fields diminish and the supply gives out it is the purpose of the Peoples Natural Gas Company to manufacture and mix such gases as can be made with those that are natural?

A. We are investigating it and I rather think it will be the policy to do that in places that are large enough to take care of it, yes, sir. We hope to take care of the whole system, all the little towns that are—(Interrupted.)

X Q. The artificial gas that can be mixed with natural gas can be transported through your present pipe lines as they are now located, largely, of course?

A. We think it can, yes.

[fol. 631a] By Commissioner Reed:

Q. Do you know of any company that is doing this?

A. Mixing artificial gas?

Q. Yes.

A. I know of some that were mixing it to a small extent last winter, yes sir. In California they have a company that has been mixing it—(Interrupted).

Q. But I mean in Pennsylvania?

A. I don't know of any in Pennsylvania, no.

By Mr. McCahill:

X Q. Mr. Tonkin, I understand you to say that you are already feeling the shortage in Altoona of natural gas?

A. Only on cold days, not so much this Fall, but I mean we do feel it on cold days and have for years down there.

X Q. That is the end of the line?

A. Juniata is practically the end of the line.

X Q. Have you any steps in mind for remedying that shortage or taking care of that shortage in Altoona?

A. We are doing the best we can, the same as we have over the last several winters.

X Q. Over the rest of the system?

A. Yes.

Redirect examination.

By Mr. George B. Gordon:

R. Q. Mr. Tonkin, the Peoples Natural Gas Company is not the only natural gas company existing in Western Pennsylvania that produces gas, is it?

[fol. 632a] A. No, sir. There are a great many.

R. Q. What other companies produce gas which might be a source of supply for the Johnstown district as well as the Peoples Natural Gas Company?

A. Well, of course, there are other companies.

R. Q. I am assuming that there is a line up there (you have to lay lines).

A. Assuming that they would make a contract with them?

R. Q. Yes, and commissioned them to give a supply?

A. Well the Equitable Gas Company is not far away and the Fayette Gas Company is not far away and a number of small local companies which the other companies purchased gas from.

R. Q. Do you purchase a good deal of gas?

A. We purchase a great deal of gas.

R. Q. You purchase some gas in Pennsylvania as well as in West Virginia?

A. Yes, sir.

R. Q. Now, Mr. Tonkin, speaking of this enlarged consumption of natural gas in Johnstown that has happened recently, which you have referred to, was that after you gave them notice of the termination of the contract?

A. It seems to have been increased, yes. It seems to have been after that date.

R. Q. There has been a large increase in the consumption of natural gas in Johnstown since we notified them that we would terminate the service?

A. Yes; but I attribute it to the use of gas for cooking because coal got high about that time.

R. Q. Has the price of gas been low in Johnstown?

[fol. 633a] A. The price of gas has been very low in Johnstown. That is the reason Altoona is not as good a gas town as Johnstown, it always has had the higher rates.

R. Q. What is the basis of the rate in Altoona at present?

A. I understand fifty cents for natural gas.

R. Q. What is it in Johnstown?

A. I understand they charge thirty cents in Johnstown.

R. Q. And you attribute the increased demand in Johnstown since you gave this notice to the high price of coal and the low price of gas?

A. Yes.

R. Q. Gas has not gone up as coal has?

A. No.

Cross-examination by Mr. McCahill:

X Q. When did you see the last figures on the consumption of gas in Johnstown, Mr. Tonkin?

A. In the month of May, 1921.

X Q. And they had increased considerably had they in that month of May over the month of May the year before or 1920?

A. I think they had, yes, sir. They had not for the month of May but for every month prior to May they had.

X Q. What do you mean by during the year?

A. I mean that in the month of May domestic consumers—in the month of May, 1920, the domestic consumers in Johnstown averaged six thousand feet per consumer. That was the same average in the month of May, 1921. However, in January, February, [fol. 634a] March and April in 1920 as compared with January, February, March and April of 1921—No. They did not increase, it was less on account of the weather in those months. It was in every town considerably less but Johnstown held up better than the others.

X Q. Now Mr. Tonkin, you know of course that during the months of January, February, March, April and May of 1921 coal was less expensive than in those same months the year before? There was a general drop in the price of coal before the first of the year 1921?

A. Yes, there was.

X Q. So that any increase of the gas consumption would not be due to a rise in the price of coal as you have just stated a few minutes ago?

A. Well we do know that the gas consumption per consumer has gone up in Johnstown.

X Q. How much has it gone up? That is the point I want to get at.

A. I think it has gone up from about fifty-three thousand to eighty-two thousand. I think I heard the testimony only a short time ago on this Peoples and Johnstown case where they commented on Johnstown being a poor gas town and as I recall the figures it was 53,000 at that time and now it has gone up to 82,000 for the year 1920.

X Q. You don't have the exact figures in front of you, however, do you?

A. No.

X Q. Your statement that it has gone up is that you remember it from the testimony?

[fol. 635a] A. No; I remember it in another way, that Johnstown was a much worse town for gas than Altoona. Altoona has always consumed much more gas per consumer than Johnstown has and I know that during the last two or three years the figures have been reversed.

X Q. What are the figures for Altoona if you have them?

A. Well I gave you the figures for Johnstown. I only have them in 1920. 73,000 feet for Altoona and 82,000 feet for Johnstown.

X Q. You don't have it for the previous year?

A. No, I do not.

X Q. Do you know whether Altoona has been stationary or has gone up or come down in consumption of natural gas per consumer?

A. Altoona has increased slightly.

TESTIMONY OF MR. C. F. UEBELACKER

Mr. C. F. UEBELACKER, called on behalf of the People's Natural Gas Company, and duly sworn, testified as follows in response to

Direct examination by Mr. George B. Gordon:

Q. Where were you born, Mr. Uebelacker?

A. In Rochester, New York.

Q. And where do you live now?

A. In Hackensack, New Jersey, is my residence; my business is in New York.

[fol. 636a] Q. What is your profession?

A. I am a consulting engineer.

Q. How long have you followed your profession?

A. Since my graduation from Princeton in 1890.

Q. What is the name of your firm?

A. Ford, Bacon & Davis.

Q. And your offices are located where?

A. At 115 Broadway, New York City.

Q. You have been acting as a consulting engineer all these years?

A. Since about 1900.

Q. And with the same firm?

A. With the same firm.

Q. You are a member of the firm?

A. I am a member of the firm.

Q. Have you had any experience in valuation of public utility companies' properties?

A. Yes. Beginning about 1904 or 1905 I have spent probably fifty per cent of my time on valuation work.

Q. What kind of public utility companies have those been, in a general way?

A. Electric light, hydro electric, street railway, artificial gas,

natural gas; I don't think I ever prepared a valuation on a water supply company but otherwise on practically all public utility lines.

Q. What experience have you had in making valuations for natural gas companies?

A. Beginning about 1906 I have made investigations most of which involved either valuations or estimates of cost of installations on some approximately fifteen different natural gas companies.

Q. And from that time down to the present?

[fol. 637a] A. From that time down to present.

Q. And where have those companies been located?

A. I can give you a list of some of them, I don't think it is a complete list.

Q. Just in general. Were some of them in Pennsylvania?

A. Some of them were in Pennsylvania, some in Ohio, some in West Virginia, some in Oklahoma and Kansas and some were in California.

Q. What companies have you made valuations for investigation as to their rates in Pennsylvania, West Virginia and Ohio?

A. In Ohio for the East Ohio Gas Company and for the Union Natural Gas Company and the North East Ohio Natural Gas; one other small company, I have forgotten the name of it. In Pennsylvania for the Philadelphia Company, and the Peoples Company and the Alum Rock. That was not really a valuation although it involved an estimate of the cost of the property made for financial purposes and not for the rate purposes.

Q. By the Philadelphia Company you mean a subsidiary of the Equitable?

A. What was a subsidiary of the Equitable Company. At the time I made the investigation it was the Philadelphia Company.

Q. That was some time ago?

A. That was in 1906 and 1907.

Q. How about West Virginia?

A. I made a valuation of the Reserve Natural Gas Company and the Hope Natural Gas Company and the Fairmount Light & Heat Company, as I recall the name of it now. It was several years ago.

[fol. 638a] Q. In making those investigations have you acquainted yourself with the general natural gas situation in Pennsylvania, Ohio and West Virginia?

A. I have.

Q. Have you acquainted yourself with the production of natural gas?

A. I have.

Q. And the cost of production?

A. I have.

Q. And the transportation?

A. I have.

Q. And the distribution?

A. Yes.

Q. And have you built up figures as to costs and fair returns and all that kind of thing for those various companies?

A. Yes, I have done so, referring now by "various companies" to the Hope and People and to the East Ohio Company.

Q. You are aware of the fact, I believe, that the Peoples Natural Gas Company gets a large amount of gas from the Hope Company?

A. Yes.

Q. Have you made a valuation of the Hope Company's property and of its cost of carrying on its business?

A. I have.

Q. Have you made a similar investigation for the Peoples Company?

A. I have.

Q. The Peoples Company is also a producing company?

A. It both purchases and produces.

[fol. 639a] Q. Now when did you make this investigation of the Hope and the Peoples Natural Gas Company?

A. Beginning about the latter part of August, 1920, and it is just being completed now, in fact the final piping of it is not yet completed although I have the summaries.

Q. What sort of a system did you have in making those investigations? I assume you did not do it all yourself?

A. Not by any means. Roughly speaking, I think I had of our own forces about thirty-five to forty men here and about double that number of men assigned to the work, to work under the supervision of our men, from the company. I should say all told there were about one hundred men on it. In addition to that I had the advice of Dr. White of West Virginia in the—(Interrupted.)

Q. Who is Dr. White?

A. He is the State Geologist of West Virginia. I have the advice of Dr. White in our studies of the volume and rate of decline in the gas field.

Q. About thirty-five of those men you say were your own employees?

A. To the best of my recollection it was about thirty-five men we had here.

Q. And under your general direction and under their accurate work or by men working under them, you secured the necessary data?

A. That is the case.

Q. I think at this date I will ask you, Mr. Uebelacker, if you prepared a map showing the transmission line which you located in Pennsylvania?

A. I have done so, yes.

[fol. 640a] Recess was taken at this point until 1:45 o'clock P. M. of the same day at which hour the hearing was resumed. There were present the Sitting Commissioner, Counsel as before, parties in interest and witnesses.

Mr. C. S. Uebelacker, recalled, testified as follows in response to

Direct examination continued by Mr. Geo. B. Gordon:

By Mr. Gordon: I might state here that counsel for The Peoples Natural Gas Company understand that the only issue presently to be decided by the Commission and as to which evidence is now being introduced that is in so far as rates are concerned, is the question whether or not the rates set forth in Supplement No. 2 to P. S. C. Pennsylvania No. 7 tariffs of The Peoples Natural Gas Company which has been introduced in evidence in this case and marked "Exhibit J-17," was a reasonable rate, and therefore the evidence about to be introduced is not to be understood as introduced for the purpose of affecting the question of what might ultimately be decided to be a reasonable rate for natural gas at the City line of Johnstown, if that question should hereafter become material.

Q. Mr. Uebelacker you said that you had a map prepared which showed the Peoples Natural Gas Company's distribution line in Pennsylvania?

[fol. 641a] A. I have. (Map produced and identified by the witness is marked Exhibit J-19.)

Q. Is this blue print Exhibit J-19 the map which you referred to?

A. That is the map which I referred to, yes.

Q. And it shows in heavy white line the distribution of the pipe system in so far as it is located in the state of Pennsylvania?

A. The Transmission Pipe System.

Q. It does not undertake to show any distribution line?

A. No distribution line, whatsoever.

Q. And where did you draw the line as between distribution and transportation?

A. At the center point at which the gas is delivered for distribution at low pressures.

Q. That is for example gas coming into Pittsburgh, you stop your transmission line at the point where the pressure was reduced at the pressure regulation, where the gas is delivered for distribution to use in the municipality?

A. That is correct, yes.

Q. And through your investigation and figuring in this company you have followed that system, have you?

A. I have followed that system and in general the system of division of expenses required by the Public Service Commission of the State of Pennsylvania.

Q. And with the reference to the Hope Company in West Virginia did you use the same system?

A. The same system in the case of the Hope Company in West Virginia that I have used in the case of the Peoples, in Pennsylvania.

[fol. 642a] Q. What were the items that you took into account in determining what was the value of the plants of the Peoples Natural Gas Company and the Hope Natural Gas Company?

A. The priced inventory of physical plants, the working capital,

the material and supplies, the value of gas rights and the expenses prior to operation.

Q. Did you set up for both these companies an estimate of reproduction value as of 1920?

A. I did.

Q. And did you set up that connection estimate of a fair return on that in cents, on the natural gas produced in 1920?

A. Not on the basis of the valuation based on 1920 prices but on the basis of a valuation at the average between pre-war and 1920 prices.

Q. Your reproduction value of the plant was arrived at how?

A. I prepared an inventory of the physical properties which I priced for that portion of the physical property, which was constructed prior to December 31, 1915, at the average prices current for the ten years prior to December 31, 1915; and for that portion of the plant which was constructed subsequent to December 31, 1915 at the prices current at the time of that construction. This valuation I have termed the pre-war valuation. I also priced the same physical inventory at the prices current on or about December 31, 1920, which latter basis I have termed the 1920 basis. I have prepared my figures as to costs, return on investment, and so forth, on the average between the two bases, namely the sum of the pre-war basis and the 1920 basis divided by two.

[fol. 643a] Q. Have you a schedule or diagram showing your Peoples Natural Gas Company's valuations, production, and so forth?

A. I have before me here reproduction costs new at the average between 1906 and 1915 prices and 1920 prices.

Q. I want to get at these so that I can give counsel on the other side copies. Is Exhibit J-20 the paper that you referred to?

A. It is.

Q. This Exhibit J-20 shows the total valuation or the total reproduction costs of the Peoples Natural Gas Company's property, plants, and working capital as $53,365,259.

A. That is correct.

Q. Did you prepare a corresponding statement of the Hope Natural Gas Company?

A. I did.

Q. Is Exhibit J-21 the statement that you have referred to?

A. That is the statement I have referred to.

Q. And that Exhibit J-21 shows a valuation of the Hope Company on the same basis of $105,967,376.

A. Yes.

Q. Were they both arrived at in the same way, that is on the same basis?

A. Both arrived at in exactly the same manner.

Q. And with reference to the same period?

A. With reference to the same period, yes, December 31, 1920.

Q. I show you two papers which have been marked Exhibit J-22 and Exhibit J-23 respectively; what do those exhibits show?

[fol. 644a] A. For the Peoples Natural Gas Company the total

expense including depreciation and the return on investments, or rather the return on valuation as shown in statement Exhibit J-20 for the production, transmission and distribution of natural gas during the calendar year of 1920 and including in the cost of production the cost of purchased gas. Statement, Exhibit J-23 is the same information and on the same basis for the first six months of the calendar year of 1921.

Q. And I notice that there is quite a variation between your results; that is you show the cost to the Peoples Natural Gas Company in 1920 of gas per thousand feet at .47230 cents?

A. That is the case.

Q. And in the first six months of 1920 at .60156?

A. Yes. Both of which figures include both cost of distribution, operating expenses and return on capital and investment and depreciation on same.

Q. Both figures include of course cost of distribution, wherever the Peoples Natural Gas Company distributed?

A. That is the case.

Q. Just so that we may understand it Mr. Uebelacker, you mean by that in order to get at a cost at the City gate we will say of Johnstown there would have to be deduction from that? That is the average cost of distribution to the Peoples Natural Gas Company?

A. There would have to be deducted from that the distribution, operating expense, and the depreciation and return on investments, on the distribution system, all of which figures are shown separately in the statement, both Exhibit J-22 and Exhibit J-23.

[fol. 645a] Q. The distribution expenses mean those below the reducer in the municipality, below the reducing station?

A. Yes.

Q. In addition to the depreciation?

A. Plus depreciation on the distribution investment.

Q. Now are you able to tell us, Mr. Uebelacker from these schedules or otherwise what the amount of distribution expense is that you have in these figures? In other words, how much would have to be deducted from that price in order to get the value of gas before it was distributed?

A. On Exhibit J-22 there would have to be deducted from the total figure of .47230 cents, shown in column 18, the sum of column five, distribution system operating expenses and taxes, column eight, distribution system depreciation, and column twelve, return on distribution value, property value, making 6.903 cents.

Q. Which would leave a net of how much?

A. 40.327 cents.

Q. Now the same thing as to Exhibit J-23, 1921?

A. Deducting the figures in the same column on Exhibit J-23 as were indicated on Exhibit J-22, makes a deduction for the total of columns 5, 8 and 12 on Exhibit J-23, of 10.478 cents which deducted from the column 18 leaves 49.678 cents.

Q. I understood you to state that in these exhibits they include the cost to The Peoples Company not only of its own production

but of its purchase of gas, and I wish you to state whether there was a large amount of gas purchased from the Hope Company? I don't mean to hold you to figures because you are not an operating [fol. 646a] man but I believe there was a very large amount purchased from The Hope Natural Gas Company?

A. Without separating as between Hope and other producers the figures in question are given on Exhibits J-22 and J-23 in columns 1 and 2, and Exhibit J-22, the total sales of the Peoples Company during the calendar year of 1920 were twenty-eight billion plus, of which they produced 11,160,000,000 and purchased partly from the Hope Company the balance.

Q. Just so we do not get into any misleading statement, Mr. Uebelacker, if I understand it the way you have set this out, all of the leakage would come out of production? That is you have a total figure of total sales and you have a figure of what they bought and you deduct what they bought from the total sales and you assume that that was production?

A. That would be correct.

Q. So that any leakage that there was in their line would on that system instead of being pro-rated between the purchased and the produced gas, would all fall against the produced gas?

A. It would all fall against produced gas, as I see it now.

Q. So that if there was any error it would perhaps be in production as you have it here?

A. As far as I see it now that would be the case.

Q. And there were very large purchases from the Hope Company and we are willing to state here that the Hope Company is owned by the same interests as the Peoples Company; and I therefore will ask you to state what the price was that was paid by the Peoples to the Hope Company which is covered by these statements?

A. The price used in these statements for gas purchased from [fol. 647a] the Hope Company and included as gas purchased under the total cost of production column 3 in each statement, was during the year 1920, to which Exhibit J-22 refers, twenty-three cents per thousand cubic feet delivered at the State line of West Virginia; and during the first six months of the calendar year of 1921, to which Exhibit J-23 refers, twenty-three cents from January 1st to May 1st and thirty cents from May 1st to June 30th.

Q. Now did you prepare a statement of costs to The Peoples Natural Gas Company of natural gas in the year 1920 and the first six months of 1921, excluding everything except out-of-pocket expense?

A. I did.

Q. Is Exhibit J-24 that statement?

A. That is the statement, yes.

Q. And let me ask you what you did in this statement as to the Hope Natural Gas Company's gas?

A. I added up the production, operating expense, exclusive of purchased gas but including the amortization of the cost of drilling gas wells, and the direct transmission operating expense including operating, overhead and taxes.

Q. That is in this statement you did not take the prices which The Peoples Natural Gas Company paid for the Hope gas?

A. In this I am referring now to the expenses of the Hope Company as shown in Exhibit J-24.

Q. I say, in getting at the cost to The Peoples Company you did not take, in Exhibit J-24, what The Peoples paid to The Hope?

A. No.

[fol. 648a] Q. But on the contrary you took The Hope out of pocket expenses?

A. I made a combined expense statement for the production and transmission of gas for The Hope and the Peoples leaving out of that any profit or return on the investment. That is simply operating expenses excluding all distribution expenses, depreciation, and return on investments.

Q. Nothing in relation to profit?

A. Nothing in relation to profit.

Q. For either company?

A. Not for either company.

Q. And the figures that you reached for the year 1920 were .24716 of a cent?

A. Yes. May I make a statement there?

Q. Yes.

A. Columns 2, 3, 4 and 5 of Exhibit J-24 applies to the systems as a whole, whereas columns 6, 7, 8 and 9 give the same information as given in columns 2, 3, 4 and 5 but for that portion of the system east of Derry and that portion of that system applicable to Johnstown.

Q. I was coming to that. As far as this first figure in the footing at the bottom of column 3 of .24716, that is the out-of-pocket expense for the year 1920 of the whole system.

A. Of the whole system.

Q. The next column, bottom of column five, is the first six months of 1921, .28791 cents for the whole system?

A. That is correct.

Q. Now then when you come to the footing at the bottom of column seven, of .26848 of a cent, which is comparable with the .24716 of a cent, that shows an increased cost of substantially two [fol. 649a] cents, which you think is attributable to gas that was delivered to Johnstown over and above their general average of their cost of gas all over the system?

A. That is additional expense assignable to the distribution of gas and the transmission of gas to Johnstown as compared to the transmission of gas to all of the rest of the system, west of Derry where the Johnstown line begins.

Q. That is, the others then all stop at Derry?

A. Yes.

Q. That is, they are the expenses up to Derry?

A. Yes.

Q. And then you had both for 1920 and 1921 substantially two cents for the additional expense of transmission from Derry to Johnstown?

A. Additional expense for transmission from Derry to Johnstown.

Q. I wish you would tell us how you got at that extra figure?

A. We took the mileage of transmission lines in all of the system west of Derry, at which point the transmission line devoted to the Johnstown, Altoona and other Eastern points begins, and the mileage of the system east of Derry. We then divided the transmission expenses for the total system between that zone which lies west of Derry and that zone which lies east of Derry in proportion to the mileage of transmission lines. The gross annual expenses thus arrived at for the zone west of Derry and the zone east of Derry were divided for the zone west of Derry by the total gas distributed—or not distributed but transmitted west of Derry, including the gas [fol. 650a] going out of the Johnstown and Altoona lines east of Derry. The portion of the transmission expenses which had been then assigned to the zone east of Derry was again divided by the proportion of the mileage required to serve Johnstown alone and the proportion of the mileage required to serve east of Johnstown. The first portion, namely, that expense involved in operating the portion of the transmission line mileage between Derry and Johnstown was then divided by the total gas shipped east of Derry and that was considered the additional figure chargeable to the gas delivered to Johnstown on account of its transmission east of Derry. In other words the expense attributable to the transmission mileage between Derry and Johnstown was divided by the total gas passing through that line, including the gas going on beyond east of Johnstown.

Q. I show you a paper that has been marked Exhibit J-25 and ask you what that is?

A. That is a statement of the cost per thousand to The Hope Natural Gas Company of producing and transporting natural gas, inculding operating expenses, taxes, depreciation and return on investments, but excluding from the calculation, gas purchased from outside producers. In this statement, however, the depreciation, return on investment and operating expenses on transmission are divided by the total gas sold, including purchased gas, in arriving at the cost per thousand, shown under the coulmn respectively so headed.

Q. And that Exhibit J-25 shows the total cost to the Hope Company of .33445 of a cent?

A. Yes, .33445 cents for the year 1920 corresponding to a pro- [fol. 651a] duction in addition to purchased gas of 55,247,000,000 feet.

Q. That means, cost at the West Virginia State Line?

A. That is cost at the West Virginia State Line or at any other point of delivery at the extreme end of the Hope Company's transmission line.

Q. Bearing upon this case in illustration the cost at the State Line of West Virginia, where it was delivered to The Peoples Natural Gas Company?

A. At the State line of West Virginia.

Q. I show you Exhibit J-26 and ask you what that is?

A. That is a statement similar in every respect to Exhibit J-25 excepting that it covers the period of the first six months of the calendar year of 1921.

Q. And the figures shown there of the cost to The Hope Natural Gas Company of the gas it produced itself was .44517 cents?

A. That is correct.

Q. I show you paper that has been marked Exhibit J-27 and ask you what that is?

A. That is a parallel statement to Exhibit J-25 covering the calendar year of 1920 but including in production expense and in divisor for production, depreciation and return on production value, the volume of gas purchased by The Hope Company from outside producers as well as the volume of gas produced by The Hope Company from it own fields.

Q. And the figures you reach on that is .29065 of a cent?

A. That is correct.

[fol. 652a] Q. I show you Exhibit J-28 and ask you what that is?

A. That is a parallel statement of J-26 and covers the first six months of the calendar year of 1921, but—Let me change that answer: that is a statement parallel in every respect to Exhibit J-27 excepting that it covers the first six months of the calendar year of 1921 whereas Exhibit J-27 covers the calendar year of 1920.

Q. And the figures you reach on that is .29056 of a cent?

A. .37823—correct.

Q. Did you figure, Mr. Uebelacker, on what the percentage of costs was to The Peoples Company of its system as between the distribution expenses and profits and all other expenses and profits? That is the distribution expenses inside of the reduction station at the municipal line?

A. Operation expenses for production and transmission have averaged over the last ten years about 85% of the total operating expenses and taxes, leaving about 15% of operating expenses and taxes for distribution. The proportion between value of production and transmission plant to the whole value of the plant including distribution is from 75% to 80% of plant included in the production and transmission systems as against 25% to 20% included in distribution systems.

Q. Did you figure out the total, including everything?

A. I haven't that figure in mind just instantly, Mr. Gordon; I think Mr. Lerchs can supply it.

Q. Mr. Lerch said it is 82 and 18?

A. 82 and 18.

Q. If I get this right, in all the statements which include gas [fol. 653a] purchased, they are what the Peoples Natural Gas Company actually paid and what the Hope Gas Company actually paid?

A. That is correct.

Q. For gas purchased?

A. That is correct.

Q. Except this one set of figures, where you set up to The Peoples a cost of Hope at the State Line—it shows that an expense?

A. That is correct.

By Mr. Geo. B. Gordon: You understand, Mr. Commissioner that all that I am putting this in for (because these two companies are owned by the same company) is for the purpose of showing that what these two companies paid was not an excessive price, rather than to show just what the one company paid to the other, lest it might appear that what one company paid to the other was just an arbitrary figure.

Q. Mr. Uebelacker, did you make a study of the production of these gas fields in Pennsylvania, West Virginia and Ohio?

A. Yes.

Q. With reference to their productivity at the present time as compared to the past?

A. I did, yes.

Q. How extensive a study did you make of that?

A. I don't know of any data that are available that I did not use, Mr. Gordon.

Q. How extensive a study did you make?

A. I spent in all several months at that—over six months.

[fol. 654a] Q. Did you have many wells? Just tell the Commissioner how you went about to get data as to the production of available gas supplied?

A. As to the West Virginia field we had the record of all of the wells of the Hope Company and of the Reserve Company, of the Clarksburg Company and the few possessed by The River Gas Company. And in addition to that—let me see, that is some forty-five hundred or 5,000 now active wells and some three or four thousand wells that are no longer active or that have been drilled deeper. In addition to which we had the record of, I think, between 2,500 and 3,000 wells owned by other companies and drilled on territory contiguous to that of the Hope Company or The Reserve Company. In the Pennsylvania field we had the record practically of The Peoples Company only.

Q. About how many wells?

A. I do not recall now the number of wells The Peoples Company had; I will have to refer to my notes for that.

Q. A considerable number?

A. It is considerable number, yes.

Q. And how about Ohio?

A. In the case of the East Ohio Company we had the records of all of their wells amounting to some three hundred or 325, including abandoned wells.

Q. Did you make any estimate as to the probable duration of the natural gas business? Or, rather, as to the amount of gas which had been already removed from producing wells?

A. I made an estimate—of course I knew to begin with from the records of the company the amount of gas which had been removed [fol. 655a] from the field. From that and the decline in rock pressure, after assigning the removed gas to the different sands from which it has been withdrawn, and considering the decline in the rock pressure of the individual sand, I made an estimate of the

remaining volume of gas in the West Virginia field and in the Pennsylvania field, but not an estimate of the period over which that gas lasts because that latter estimate involved an assumption as to the rate at which the gas is used and that in turn involves an assumption as to the price which shall be paid.

Q. Well, what is the fact with reference to the present status, in your opinion, as to how much of the gas has been removed from the existing fields, if you can put it that way, and how much there is left?

A. In the Hope Company field about 65% is my recollection now. I haven't looked at those figures for probably forty-five or sixty days and I will have to refresh my memory from notes. (Witness refers to memoranda.) About 65% of the gas has been removed from the Hope Company field. In the case of The Peoples Natural Gas Company I do not recall just at present, I will have to refer to my notes which Mr. Lerch has gone to get. I haven't the memoranda at hand here.

Q. Mr. Uebelacker, I noticed that in your figures here as to the cost of natural gas you start with a certain figure as to the value of the gas in the wells and I want to ask you how you get at that?

A. Referring now to Exhibit J-23, which is typical of all these, do you refer to column 3 or to column 16?

Q. What exhibit is that?

A. I took Exhibit J-23, which is typical of all of the cost exhibits. [fol. 65 'a] Q. Well in column 3 of Exhibit J-23 you start with direct expenses, overhead and taxes on the production system?

A. Yes.

Q. And does that include something for the value of the gas?

A. That includes nothing for the value of the gas.

Q. Now where does your value of gas come in on this?

A. In Column 16.

Q. Is the value of gas withdrawn .02530 cents?

A. Yes.

Q. And that is what you might call the foundation figure; the rest of it is all cost and interest and that kind of thing?

A. That is correct.

Q. Now how do you get at that two and a half cents, if I may call it that for brevity, which you start with as the value of gas in the field?

A. Let us take Exhibit J-25 which for reasons that I can explain is more typical, in which the value of gas appearing in column 12 is 2.87 cents. I arrived at the value of 2.87 cents by deducting from the price which *is* this case The Hope Company agreed to pay and an independent outside producer who had a large volume of gas to offer, for gas which they are now actually purchasing from him, this contract having been entered into in 1920 and consequently representing most nearly the then current market price of gas. From this price which they paid this outside and independent producer I deducted the production, operating expenses and taxes including their proportions of operating, overhead—operating general ex-

[fol. 657a] pense, plus the amount per thousand cubic feet which it would be necessary to set up to amortize the unrecoverable cost of a gas well drilled in 1920 over the volume of gas which we estimate would be eventually recoverable from the average gas well. Now that latter figure represents the amortization of costs of gas wells, not of any gas value which they have but simply of the actual structural cost of the gas wells after allowing for any recoverable value, such as tubing, casing, valves, and so forth, and that figure of costs per thousand must be set up to recover the production costs of gas wells plus the operating expenses per thousand, we consider to represent the cost to The Hope Company of producing gas from their own fields. Then if they were willing to pay in addition to that cost to them a matter of 2.87 cents a thousand feet we consider that that was the value as set by the marketable price of gas, of the gas itself, before it was removed from the ground. In other words the intrinsic value of the gas in the ground in proven gas producing territory.

Q. Do you think that is a fair way of getting at the value of gas in the ground?

A. Yes, I do.

Q. How does it compare in your mind with that of Holland experts, as to value of gas fields per acre, or something of that kind?

A. Well I checked it around as against the opinion method of value of gas territory per acre and take The Hope Company for instance, it shows a value for all acreage of The Hope Co. proven and unproven, of about $14.00 an acre; or for the proven acreage as exclusive of the unproven of about $35.00 an acre. Now I think that would be rather conservative acreage value to assign to proven [fol. 658a] gas territory in West Virginia. In fact I recall several cases where proven gas territory has been valued by the opinion method considerably higher. In fact there are so many more market sales of gas of produced gas than there are market sales of gas producing territory, that we have a much more perfect measure of the market value of gas and through that of the market value of gas producing territory than we have by taking the sales of gas producing territory direct.

Q. Do you think it practicable to conduct a natural gas business under such conditions, where one natural gas company is compelled to supply natural gas to another?

A. Pardon me.

Q. Do you think it is practicable to conduct the natural gas business under conditions where one natural gas company is compelled to furnish natural gas to another?

Counsel for the City of Johnstown objects to this question as incompetent, irrelevant and immaterial to the issue in this case.

By Commissioner Reed: I presume that raises the question of law. It may be a little mixed. Ordinarily I would think the Commission would have no jurisdiction to compel one gas company to furnish gas to another, that is initially, but it might be different where one natural gas company has of its own volition entered into a contract

with another company to furnish gas. I am not expressing an [fol. 659a] opinion that is obligatory even on myself because I have not given it a thought but I do not think the Commission would have jurisdiction independently to go out and say to one natural gas company "you shall furnish gas to another." The witness may answer the question because we already have it. Mr. Crawford, testified to that and some other officer of the Peoples Company testified to that on a former hearing. An exception may be noted to this ruling in favor of the complainants.

Q. (Repeated from the records.) Do you think it is practicable to conduct the natural gas business under conditions where one natural gas company is compelled to furnish natural gas to another?

A. It has been done so many years that I think it is practicable, has been proved by actual experience, but as to its practicability in the future of course every man naturally feeds his own family first. If he has got customers of his own to supply it is natural for him to supply those before he supplies foreign customers.

Q. Where he has lots of gas it is practicable?

A. Perfectly practicable, it has been demonstrated by past experience.

Q. When it was perfectly possible for him to supply all customers he could supply other companies if he had a sufficient amount of gas?

A. Yes. The time is rapidly approaching when it will not be because the amount of gas that can be produced at a cost that will make it an economic possibility to produce it is rapidly diminishing.

[fol. 660a] By Commissioner Reed:

Q. I suppose it is more practicable than it is economical.

A. That is the point, yes.

By Mr. Gordon:

Q. Have you considered Mr. Uebelacker, what is likely to be the future of the gas business, regarding the present rate of withdrawal for consumption of delivery?

A. Well at the present rate of delivery——

Q. The present rate of delivery, yes?

A. At the present rate of delivery the cost of production and transmission apparently is going up somewhere between three and four cents a year. Now the result of that will be that in order to warrant production at these increased costs, increased retail prices will have to be asked which in turn will curtail consumption, as the consumption will decrease with the increase in price. So that the result will be not of a continuation of a supply of gas at the present rate of sale but of a continuation of a supply of gas over a longer period at a continually decreasing annual rate of sale. I cannot make any estimate that the gas is going to last so many years because I don't know how it is going to be used.

Q. Mr. Uebelacker, when you said you did not have a report in your mind of the amount of gas, Mr. Lerch handed me that (hand-

ing witness paper) which he said might enable you to give an estimate on the record—some precise record of what the rate of decline has been in this West Virginia field on which we depend so largely for gas.

[fol. 661a] A. Reading from this diagram which was prepared by us from the records of the company and from other data with which we checked the same, the estimated original pressure in the field before the removal of any gas—you would appreciate that that point has to be estimated because we have not a record of gas removed in the exceedingly early life of the field, although we know that very little gas was removed prior to the record. The estimated original pressure in the Hope field was about 850 pounds. That pressure has now fallen after withdrawal from the Hope field of 8 and a half billion, or 850,000,000,000 cubic feet to about 175 pounds, average. Now during that period from 1910 to 1920 during which period about 550,000,000,000 of the total 850,000,000,000, were produced, that pressure dropped from an average in 1910 of 555 pounds to 374 pounds. No. From an average of 360 pounds to 168 pounds.

Q. Well now what does that fall of pressure indicate?

A. A proportional exhaustion of the field.

Q. That is it is just like gas in a reservoir, as you take it out the pressure goes down?

A. Yes; with this difference; that as you drill additional wells you extend the area and consequently the cubic contents of your reservior. Consequently if you take a curve of volume of production platted against pressure—closed in pressure of wells for a field as a whole it will approximate a parabola, it will have a parabolic form and equation; whereas if you take a curve for a single well it will approximate a straight line, in accordance with Boyle's law.

[fol. 662a] Q. In general terms, when the pressure is half gone the gas is half gone?

A. In general terms, when the pressure is half gone the gas is half gone.

Q. That is what you call Boyle's law.

A. Yes.

Cross-examination by Mr. Cunningham, representing the Mayor of the City of Johnstown:

X Q. What was the purpose that you had in mind in making all of those studies and calculations relation to valuations, operating costs and so forth? What was you getting ready to express an opinion on?

A. The rational prices for the company involved the charge for their product.

X Q. In other words to be able to express your opinion as to what would be a reasonable price for the Peoples Natural Gas Company to charge for the gas sold by it in Pennsylvania, in Johnstown and in that vicinity?

A. That is the case.

X Q. And do I understand that as a result of all these calcula-

tions and so on you are of opinion that forty-seven cents plus per thousand cubic feet is a reasonable price for the Peoples Natural Gas Company to charge for the gas it sells?

A. No. I presume you are referring now to Exhibit J-22.

X Q. Yes?

A. The price of forty-seven cents as I explained in my direct [fol. 663a] testimony includes practically seven cents of distribution expense and the difference between that practically seven cents and the forty-seven cents appears on Exhibit J-22 or forty cents plus would be the price indicated in the year 1920 during which time The Peoples Company was paying the Hope Company 23 cents for gas.

Q. Forty cents for what?

A. Forty cents per thousand cubic feet.

X Q. To anybody that wanted to buy gas?

A. To anybody that wanted to buy gas wholesale.

X Q. That is what I am coming to. Then the figure appearing on this Exhibit J-22 of forty-seven cents plus per thousand cubic feet is a retail price to people who are buying in retal quantities?

A. That is correct. That is, not a retail price but that would be a fair price in the year 1920 as the figures given in Exhibit J-22 would reperesent the fair prices to have been charged in the year 1920 and under the circumstances then existing.

X Q. Then you are not prepared to state what would be either a fair retail or wholesale price at the present time?

A. I think I would be in position to make a statement of what would appeal to me to be a fair price, on very brief consideration of the facts before me here.

X Q. Well what in your opinion is a reasonable retail price per thousand cubic feet for the gas today?

A. Without going into detailed calculation, between forty-five and fifty cents.

X Q. What in your opinion would be a reasonable wholesale price for natural gas today?

A. I assumed that your previous question was wholesale. Did I misunderstand you?

[fol. 664a] X Q. I said retail price plainly I think.

A. I would substitute then—I understood you to say wholesale price—around sixty cents then, from fifty to sixty.

X Q. Now in this particular case you are assuming the Peoples Natural Gas Company selling gas to the Johnstown Fuel Supply Company at or near the City line?

A. That is my understanding of what would be the cost.

X Q. You spoke in your testimony of consumers. Did you consider Johnstown a consumer of The Peoples Natural Gas Company?

A. No, I Idid not.

X Q. You did not consider it a customer of The Peoples Company?

A. Not a customer in the sense that we call customers, consumers.

X Q. Well you differentiate then between the people living in

Altoona, I will put it this way—the people living in Altoona to whom gas is served directly by The Peoples Company and the people in Johnstown who get their gas through the Johnstown Fuel Supply Company?

A. No.

X Q. You do not differentiate?

A. No.

X Q. You assume, however, that The Peoples Natural Gas Company for the purposes of this case have nothing to do with the prices in the City of Johnstown to be paid by the consumers therein residing?

A. They are not supplying those consumers directly. I have no [fol. 665a] reason for assuming that they have nothing to do with that price.

X Q. Have you studied the contract between those two companies?

A. I have read the contracts, yes.

X Q. You do undertake in your opinion, as I understand it to differentiate between the obligations on the Peoples Company to the citizens of Altoona and to the citizens of Johnstown?

A. I see or know of nothing in that testimony that would warrant that conclusion.

X Q. Well you say the people in Johnstown are not customers of The Peoples Natural Gas Company in your opinion?

A. They are not, certainly.

X Q. Is not that company in your opinion under the same obligations to the people in Johnstown as consumers—

A. They are under some obligations—

Question objected to by counsel for The Peoples Natural Gas Company as not involving a question of facts at all.

X Q. I am trying to get at your point of view in expressing an opinion as to reasonableness of rates. You don't undertake to express any opinion as to the reasonable rates that should be paid by the people of Johnstown for the gas delivered to them retail?

A. I have absolutely no basis on which to place such an opinion because I have no knowledge of the expenses of the Johnstown Fuel Supply Company or of its investments.

[fol. 666a] X Q. Therefore your expression of opinion as to reasonableness of rates is based upon the assumption that The Peoples Company is selling gas in wholesale qualities to the Johnstown Fuel Supply Company and that is the wholesale rate that you are talking about?

A. That is correct.

X Q. Now in order to lay a basis for that opinion, you have made a valuation as I understand it of the property of The Peoples Natural Gas Company?

A. That is correct.

X Q. That is property all located in Pennsylvania. is it?

A. I think without exception in Pennsylvania.

X Q. You have also made, as I understand these various exhibits, a similar valuation of the property of The Hope Natural Gas Company located in West Virginia?

A Yes.

X Q. Why did you make a valuation of the property of The Hope Natural Gas Company?

A. Because I was employed by the Hope Company so to do.

X Q. What has it got to do with the opinion that you are here expressing as to a reasonable wholesale rate at the city of Johnstown?

A. Looked at from the light of the contract between The Peoples Company and The Hope Company it has nothing to do with the matters of The Peoples Company's rates. Looked at from the light of the justness of the contract between the Peoples Company and the Hope Company it has that to do.

X Q. I do not understand, sir, that there is any contract between [fol. 667a] the Peoples Company and the Hope Company involved in this case and what I am trying to ascertain is why we should consider in this case a valuation of the property of The Hope Natural Gas Company?

A. I see no reason why we should.

X Q. Well all right. Then for the purpose of testing your opinion, we may lay that valuation aside for the present?

A If you substitute for it the contract between the Peoples and the Hope Company.

X Q. Which fixes a price to be placed on the gas out at the City line?

A. Yes.

X Q. And that was twenty-three cents?

A. It was twenty-three cents up to the year 1920, and up to May 1st, 1921, is my recollection.

X Q. And then became how much?

A. Thirty cents, May 1st, 1921.

X Q. And what was it before 1920?

A. As between The Hope and the Peoples I do not recall.

X Q. That contract price has varied from time to time, has it not?

A. Yes, it has.

X Q. And was one of the purposes of your making a valuation of the property of The Hope Company for the purpose of sustaining the reasonableness of that price?

A. Or, to put it in another way, for the purpose of guiding The Hope Company as to what was a reasonable rate to charge.

X Q. The Peoples Company buys some gas and produces some, does it not?

[fol. 668a] A. Yes.

X Q. Have you in mind now the proportion of gas which it produces as compared to that which it purchases?

A. Eleven million produced out of twenty-eight million sold.

X Q. We will assume that they buy the rest?

O. They buy the rest.

X Q. But they don't buy it all from The Hope Company?

A. No, they do not.

X Q. From what other companies do they buy gas?

A. I do not recall the names of the other companies from which they buy gas but they are quite numerous.

X Q. What price do they pay those other companies?
A. I do not recollect.
X Q. Don't you know it is only about fifteen cents?
A. I do not recollect.
X Q. Have you the figures?
A. I haven't got them here but I can get them.
X Q. Do you mean they are in the city?
A. They are in the city.
X Q. Will you kindly furnish us with a record of the prices paid by the Peoples Company to other companies as compared with the prices paid to The Hope Company?
A. I will with the understanding that they are not parallel companies, that The Hope Company furnishes more service for the gas furnished that the other companies, that The Hope Company supplies more service for the price which they get than do the small [fol. 669a] individual producers who make up the balance of the gas purshased by The Peoples Company.
X Q. What do you mean by "more service?"
A. In the first place there is no individual producer outside of The Hope Company that can supply a large volume with as strong a guarantee of its continuance,—a dependable large supply of gas. They are unique in that respect.
X Q. Taking the smaller companies as a whole, however, you do have the same results, do you not, in so far as the dependability of supply is concerned?
A. I don't think it would be the same result. And further, to continue my previous answer, the Hope Company delivers gas in volume, all collected from the wells, all expenses of well, maintenance, and so on paid, with sufficient pressure to force it into the suction line of The Peoples Company at one point, an agreed station; whereas all expenses of that gas, all collection expense and expenses of all nature are included in the Hope Company's price. After it arrives there, the Peoples Company has simply to add to it the cost of maintenance of its own transmission line and pumping expenses and cost of transmission.
X Q. And those are expenses which in your opinion make it entirely proper for The Peoples Company to pay to The Hope Company more than they pay any other producers of gas?
A. Yes, I think they would. I do not conceive that they do pay more than they pay any other producer of gas but I think it would make it proper for them to do so.
X Q. And your opinion as to the reasonableness of this twenty-three cent rate as it was for awhile and now thirty cent rate is based [fol. 670a] upon your investigation and valuation of the property of The Hope Company which was made along the same lines as the valuation of The Peoples Company's property in Pennsylvania?
A. That is correct.
X Q. Now Mr. Uebelacker directing your attention just in a general way to your valuation of The Peoples Natural Gas Company in Pennsylvania, being Exhibit J-20 let me ask you on what this valua-

tion is based? That is upon what kind of an inventory did you base your valuation of the physical property?

A. Will you be a little more explicit? An inventory to me is an inventory. I don't quite get the drift of your question.

XQ. Well an inventory prepared by your men?

A. A detailed inventory prepared by our men with the employees of the company and under our supervision.

X Q. You did, however, have a detailed inventory and you have divided that inventory into production system, transmission system, distribution system, general property and other property?

A. That is correct.

X Q. Now how was the inventory secured? How was it made up? By inspections in the field or examination of the books or taking the expenditures on the books?

A. Let us distinguish first between the inventory and the valuation. The inventory is an inventory of the physical business without any value affixed to it. The valuation is the priced inventory.

X Q. I am not talking about priced inventory. I am talking [fol. 671a] about the inventory itself which is the very foundation of your estimate?

A. Your question was whether it was based on the cost in the books.

X Q. I asked you whether it was made up from examination and inspection of the properties in the field itself or whether it was based on entries in the books showing what has been paid for properties and what property has been purchased?

A. It was made up from the books, records, stop checked, and wherever stop checks showed any discrepancy between the book records and what was found on the ground, we re-inventoried and compared it with what was on the books and on the ground.

X Q. What do you mean by "stop checks?"

A. Taking a list of one hundred articles and visiting ten or twenty of them on the ground and checking the list as prepared from a previous record.

X Q. And if you found that right you assumed that the rest was right.

A. If we found that right we assumed the rest was right and if we found it wrong we assumed the rest was wrong and re-listed the property.

X Q. All right. Your inventory then was made from book records rather than inventory and inspection on the field?

A. I would say that it was made up from the two.

X Q. Well you secured that book record and stop checked in the field as you have explained and if you found the articles right you took the book record and did not visit the rest of them in the field

A. In a great many instances we did not secure that book [fol. 672a] record at all, we took the original article in the field and made an original inventory.

X Q. What do you mean by "an original inventory?"

A An original list of articles found in the field.

X Q. By inspection of the articles found?

A. By inspection and measurement.

X Q. What I am trying to find out, and you understand far better than I, is how you made this inventory. I understand that in some instances you at least took the book records for what things were bought and in some cases you checked that with what you call stop records?

A. With equal respect to you and wishing to show you how, we paid no attention to what had been bought but the book records were used of what had been installed.

X Q. I guess we are taking about different book records?

A. I think so.

X Q. You are talking about book records of what the company claimed to have?

A. Correct.

X Q. Well anyhow you satisfied yourself that you had a reasonably accurate inventory?

A. We satisfied ourselves very thoroughly, fundamentally, that the inventory must be correct.

X Q. And then you checked it. You mean that you applied unit prices to the inventory you have made up?

A. Correct.

X Q. And I understood you to say that first of all you applied to that portion of the inventory which contained the property pur- [fol. 673a] chased prior to 1915, the average unit prices prevailing for the ten years ending 1915. Is that correct?

A. That is correct in effect, but not specifically. Would you like to have the specific process we went through?

X Q. That is what I understood you to say?

A. I said that in effect it is correct.

X Q. What was the specific process that you went through?

A. We took the whole inventory as it existed on the date of our preparation, which was about November 1st, 1920 and valued that at the average pre-war prices. Then for that portion of the inventory which had been constructed subsequent to December 31, 1915, we made additions to bring the pre-war prices up to the prices current at the time the actual construction was done. The two amount to the same thing in the end.

X Q. What do you call pre-war prices?

A. In this particular instance they were the average of the prices current—average of the unit prices current from the year 1906 to 1915. That is the ten years ended December 31, 1915.

X Q. Now just let us stop there a minute. What you consider pre-war prices are the average unit prices prevailing between 1906 and 1915?

A. That is what we have used in this case, yes.

X Q. All right. Now there were higher prices from 1915 down to 1920 when you were making this inventory?

A. I say there were higher prices prevailing.

X Q. From 1915 down to 1920 when you were making this inventory—this valuation?

[fol. 674a] A. That is correct.

X Q. I don't understand how you made that first valuation. Did you apply to the portion of the inventory that had been acquired by the company prior to 1915 these pre-war prices and to that portion that had been acquired subsequent to 1915 the average prices prevailing between 1915 and 1920? Is that what you mean?

A. In effect we applied to the construction performed prior to December 31, 1915, the average pre-war prices and to the construction performed subsequent to December 31, 1915, the prices current at the time the construction was performed.

In other words, if a piece of work was performed in 1916 it was priced at 1916 prices. If in 1918 it was priced at 1918 prices. I say that was the effect of what we did.

X Q. Then if I follow you correctly it is apparently this: the portion of the property constructed prior to 1915 you used average pre-war prices for. For that portion constructed after 1915 you used the prices prevailing at the time the construction was installed?

A. This is correct with the one proviso, that the method we adopted of arriving at that is not quite the method described in your question but is the method described in my previous answer. The effect of the two methods is exactly the same.

X Q. And that made up your valuation which you designate here as the 1906 to 1915 valuation?

A. Yes, or as we have called it, the pre-war valuation.

X Q. But in your exhibit it is marked "average 1906 to 1915". Is that right?

[fol. 675a] A. The heading of the exhibit is incorrect to the extent that it makes no mention of what I have mentioned in my testimony, namely that construction subsequent to December 31, 1915, was priced as and when the construction was executed.

X Q. That is just what I am trying to develop, to understand just what unit price you used?

A. That is correct.

X Q. And then in addition to that you made another valuation by applying to the same inventory the prices prevailing in 1920?

A. As of December 31, 1920, yes.

X Q. Or what you would then call a present day price?

A. The price ruling in December, 1920, yes. It would not necessarily be a present day price ten months later.

X Q. I do not think my question implied that. It was what you then called a then present day price?

A. At the date of the inventory, present price.

X Q. In your opinion is that any fair valuation of the real value of the property of the company?

A. I would not consider that as a fair basis for a rate basis, no. It is a fair indication of the value of the property at that date but with the rapidly changing prices it would not be a fair basis for a rate basis.

X Q. But what you are trying to figure for the benefit of this Commission is a present fair value of the property of this Company, is it not?

A. Present fair value taking into consideration probable fluctuation of the value of the property of the company over a period of years.

[fol. 676a] X Q. Do you think that 1920 valuation is any indication at all of present day fair value?

A. It certainly is a good guide to judgment of present fair value.

X Q. Didn't you just throw it in as make weight to bring up the valuation as shown in the totals only?

A. Absolutely not.

X Q. Don't you think the better method is to take the average of prices prevailing over a longer period, say of ten years, in view of the fact that a large part of this property must have been acquired a good many years ago?

A. Aren't you cross questioning me under a misapprehension?

X Q. I don't know, I am sure. You engineers do a lot of things that I cannot follow you in.

A. The figures used in arriving at fair returns in the expense statement, beginning with Exhibit J-23, are not the 1920 values but the average between 1920 and the pre-war prices. In other words they are neither the high prices in 1920 nor the excessively low prices existing in 1915 and are to my mind a very fair indication of what will be the values over a considerable period of years in the future. And in that I am guided by a very considerable study of what was the trend of prices before, during and after other disturbances similar to the one we have just gone through.

X Q. Well what you did here was to take that first estimate that you got by applying those two systems of unit prices that you have already described to the result you got by taking the prices prevailing in December, 1920, and you added those two together and divided [fol. 677a] by two and took that as what you present to the Commission as a fair reproduction cost of this property?

A. That is correct.

X Q. Now I ask you how does that compare with the results that would be obtained by taking the average prices prevailing for the ten years preceding the date of your inventory? Did you make any comparison?

A. You mean just the average prices for the ten years preceding the date of your inventory? No. I did not make any comparison and I do not think there would be any use of making it.

By Commissioner Reed: Do you mean before the date of the inventory or the ten years between 1910 and 1920.

By Mr. Cunningham: I was going to ask if he had made any calculation.

A. (continued). I could give you an idea of what the result would be and it would not be very materially different from the result I have arrived at, because the average of prices in the years 1910 to 1915 is not materially different from the average of prices from 1906 to 1915, because 1906 to 1915 includes the slight hump in price trends that existed in 1907 and also the slight valley that existed in price trends in 1909.

X Q. The great fluctuation existed in what year?

A. Prior to the war period the trend was generally upward from about 1903 to 1907, as I recall it, a little earlier than 1903. Then [fol. 678a] there was quite a sharp drop in the latter part of 1907 and the early part of 1908, and then a gradually upward trend arriving at a crest in about 1914 or 1915, a little hump I think in the early part of 1914 and 1915, and then it dopped off again until 1915.

X Q. As I understand you did not make any other result than as set forth in your exhibit?

A. I have not in this instance made any other calculation. I say it would not materially affect the average results I have used in my exhibit, for fair returns.

X Q. When was the greater part of this property installed with reference to the war period, before or after?

A. By far the greater portion before the war period.

X Q. Give us an idea in percentages of how much was installed prior to the beginning of the war?

A. Oh I should say over ninety per cent.

X Q. Over ninety per cent?

A. That is just a rough guess from some figures I have in mind. I might want to vary that if I would go back and check it up, but I think that is a fair measure.

X Q. Let us assume that it is ninety per cent prior to the war period. Now would not we get a much better indication of present fair value by using the average unit value prevailing say for the ten years prior to the war period?

A. No.

X Q. You mean that ninety per cent of the property was put in prior to the war period?

[fol. 679a] A. We are looking toward what will occur in the future as well as what has occured in the past and in my opinion the figure which I have used here is most representative of the fair value that would apply over a period of we will say, eight to ten years in the future.

X Q. Then you are not basing very much in this case upon history but rather upon property as to what is going to occur in the future?

A. I am basing the whole question on what is there in the history.

X Q. But you did not choose the historical facts. Knowing that ninety per cent. of the property was put in prior to the war period you paid very little attention to the average prices then prevailing?

A. Pardon me. I used an inventory which as nearly as I can tell was a statement of historical facts. I do not know how it could be otherwise, checked on the grounds and with the records—

X Q. I agree with you. But when you came to apply the prices to that inventory and for the purpose of giving us an idea of fair values, knowing that ninety per cent. of the property in that inventory was installed prior to the war period you did not give weight to that fact, did you, in making up your valuation?

A. I did. I gave it equal weight with the prices current at the time of the valuation. Now I did this as I say in view of a study which I had made of the rise and fall of prices in previous periods of great economic distrubances made by war and it represented not simply a shot in the air as to what might be the future condition but a close approximate as to the future condition, as indicated by those past disturbances.

X Q. What is the largest element you say in this transmission [fol. 680a] system, one of the divisions in your exhibit?

A. Pipe is the largest element.

X Q. What kind of pipe?

A. Why in a transmission line wrought iron and steel pipe.

X Q. Have you any idea of the price of that pipe in the next three or four years?

A. Why I can tell what its variations has been in the past.

X Q. I know, but are you one of those engineers who are willing to tell us what the price of pipe is going to be in 1925?

A. I could not tell you what it is going to be, I can tell you what the propects are from past history.

X Q. Did you base any of your ideas with reference to valuation on your notion of what the price of pipe is going to be in 1925?

A. I based my ideas as to the reasonableness of the basis which I took, namely as to pre-war and 1920 prices, on a very careful study of the trend of prices subsequent to past economic disturbances similar to the one we have just been through.

X Q. What period of years are you giving us to get back the normal prices, following the World War?

A. Twelve to fourteen years.

X Q. That is quite similar to the Civil War. Is it?

A. Thirteen years was the Civil War period.

X Q. And you are allowing the same period here?

A. The same period here with the exception that I am considering that the average price would apply over not to exceed ten years [fol. 681a] because the last ten per cent drop to pre-war conditions subsequent to the Civil War took longer than the first ninety.

X Q. Now with that explanation of your idea in reaching a reproduction cost new of the property I wish you would tell us what is included in this whole production system property, some $22,081,-278 worth of property?

A. The value of gas lands and other items which are set forth in the requirements—the accounting requirements of the Public Service Commission of Pennsylvania.

By Commissioner Reed:

Q. I understood that you valued proved gas lands at $35 an acre. Was that correct?

A. That was correct for the Hope Company. I did not have the figure in mind for The Peoples Company at that moment. I think it is here now.

By Mr. Cunningham:

X Q. Who placed the value on the gas land for this valuation?
A. I did, with advice.
X Q. Whose advice?
A. Dr. White's.
X Q. Of Pennsylvania?
A. Yes, and some other people. I solicited quite a number of people.
X Q. Are you expert enough to value gas land?
A. I think you overlooked my direct testimony as to the method by which I arrived at the value of gas lands.
X Q. Perhaps I did because there is a good bit in this case that [fol. 682a] I do not understand. How did you get your figures here on the value of gas lands?
A. I made an estimate of the contents of the proven gas territory and applied that, so much an acre. I made an estimate of the intrinsic value of the gas by deducting the cost, the company's own production costs from the contract prices which they were willing to pay for the purchased gas and multiplying the two together I arrived at the value per acre.
X Q. For production territory?
A. For production proven territory.

By Commissioner Reed:

Q. One question if you please. If I understand you, you valued gas in the ground at about two cents a thousand?
A. Between two and three cents, depending on the—
Q. Bewteen two and three cents a thousand? And on that basis estimating the quantity of gas, you reach the estimate of $35 an arce?
A. That is correct.
X Q. That is the impression I had but I just wanted to verify it?
A. Yes. The above applies to proven territory. The unproven territory was included in the valuation at the average cost of obtaining the leases plus the cost of carrying the leases the average time which expired between their purchase and the time when they were either drilled or abandoned without drilling.

[fol. 683a] By Mr. Gordon:

R. Q. About how long was that?
A. About three years, a little under three years as I recall it.
R. Q. That is the unproven territory was at the carrying cost for three years?
A. Yes, together with the bonus. The unproven value per acre as I recall was about $4.25, about a dollar a year for carrying and about a dollar and a half for bonus and so forth.

By Mr. Cunningham:

X Q. What is the price for proven and unproven territory that you gave the Hope Natural Gas Company?

A. I haven't those figures in mind, I will have to refer to my notes to be correct.

X Q. After all this was based on market value as you could ascertain it from the prices the Peoples Company was willing to pay for gas?

A. Yes.

X Q. That is the sum of the whole thing, isn't it?

A. With this distinction, that the present day value of gas is based on the present day contract prices, the prices in contract entered into during this period and not on the prices paid under contract which may date back ten years, some of which are below six and seven cents, which of course influence the total price paid for gas very largely.

X Q. What about your overhead here? What is your percentage of overhead?

A. About $7,597,833 in here.

X Q. For overhead. What percentage of the valuation of physical property is that?

[fol. 684a] A. About fifteen or sixteen per cent.

X Q. What overhead do you include there? How do you divide that?

A. Engineering was included at various percentages from two and a half to seven per cent. (Interrupted).

X Q. Give us your division of overhead and the percentage, if you please?

A. I cannot give you the figures in dollars and cents and I haven't those details here. I can simply give you the percentages that were used in arriving at the figures.

X Q. Well, all right.

A. General administration 2%. Interest during construction on the basis of 6% on pre-war prices and 8% on the 1920 prices. 9% for the pre-construction costs, legal expenses during construction, insurance and taxes during construction and cost of finances. There is no amount included in the valuation for good will and other similar elements of value which are considered, they are simply—(Interrupted).

X Q. The overheads then are the percentages of the amounts arrived at as the valuation of the physical property?

A. In general that is true.

X Q. Now I want to direct your attention to Exhibit J-22 and to ask you whether the purpose of this is to show what the company should get per thousand cubic feet for its product in order to secure enough revenue to pay its operating costs, provide for the depreciation of its property, and have what you consider a fair return upon its investments?

A. If you will confine your question to prices and not to revenue [fol. 685a] I will answer it yes. I have not yet made any determina-

tion although from other studies that I have made I believe this price would be within the limits. I have not yet made any study as to whether this price or a lower price would produce the maximum revenue.

X Q. Well, I don't want to cribble about words—

A. I don't want to cribble about it, I simply want to be clear.

X Q. We will get together all right if we get to understand each other, because we are trying to talk about the same thing?

A. I think so.

X Q. What I am asking you is whether the purpose of this exhibit is to show what price the Peoples Natural Gas Company should get per thonsand cubic feet for its product in order to enable it to pay its cost of operation, provide for the annual depreciation of its property and have a fair return to its owners upon their investment?

A. With the proviso that this price would not be sufficiently high to detrimentally affect the market, yes.

X Q. Oh well.

(At the request of the examining counsel the answer of the witness is read from the record.)

X Q. Then you mean that is what they ought to get if they can get it, if the traffic will bear it?

A. Well that is rather a crude expression, of "If the traffic will bear it."

X Q. Is it the same as what you mean when you say "detrimentally affect the market?"

[fol. 686a] A. Let me say this, that in my opinion it would be the price which they should ask.

X Q. In other words in your opinion they need this?

A. They need it. There is no question about that. And in my opinion this would be a correct price to ask, economically as well as from the standpoint of their needs.

X Q. I am not asking you, sir, whether in your opinion this is a price which the public could afford to pay?

A. I wish you would.

X Q. I am asking you whether looking at it from the window of the company this is advice they need in order to pay their operating expenses, provide for the wear and tear on the property, and still have a fair return?

A. It is, based on the volume sold in 1920.

X Q. Now what are your figures with reference to operating expenses based upon? Where did you get them?

A. From the records of the company, their monthly statement of operating expenses, their monthly financial statement.

X Q. But this annual expense,—or did you take an average over a period of years?

A. These were actual expenses.

X Q. Over what period?

A. In the case of Exhibit J-22, for the year 1920.

X Q. How did you estimate the annual depreciation?

A. By applying to each class of equipment going to make up [fol. 687a] the physcial plant a percentage indicated by our inspection of that class of equipment, amounting to—(Interrupted).

X Q. That was not based on the 4% sinking fund method, or the straight line—

A. The straight line.

X Q. Oh. That is the straight line method is it?

A. Yes.

X Q. Did you take off what we called the accumulated straight line depreciation, in your valuation?

A. The valuation was the cost to reproduce new.

X Q. See if I follow you. The valuation is the cost of reproducing the property undepreciated? In other words, what you are giving up here is the reproduction cost new without deducting anything for accrued depreciation?

A. That is the heading of statement, Exhibit J-20 and statement Exhibit J-21, but in Exhibit J-21 it has been omitted I see, but it is on Exhibit J.-20, "Reproduction costs new."

X Q. I don't care what appears on the heading but is it a fact that this reproduction cost which you give here is the cost of reproducing the company new without deducting anything for accrued depreciation?

A. Absolutely.

X Q. Why didn't you deduct for accrued depreciation?

A. Because I don't think that is a fair valuation.

X Q. Then in your opinion no amount is to be deducted in a case of this kind for accrued depreciation?

A. In a case of this kind where property is rendering one hundred [fol. 688a] per cent of the service it would render when new there is nothing to be allowed for accrued depreciation.

X Q. In other words that is your reason for your opinion that nothing should be deducted for accrued depreciation?

A. That is one of my reasons, for it. I have numerous other reasons for it.

X Q. I expect so.

A. I noticed I am not alone in that.

X Q. Our commission having decided that it is to be deducted I want to know your reasons. I notice the fact that you have not made any deductions?

A. I have not, and I never have made any deductions for accrued depreciation in arriving at a fair valuation.

X Q. I do not care what your method has been but what you did in this case I want to know.

By Mr. Gordon: He has told you.

X Q. You calculated your annual depreciation by the straight line method rather than by the four per cent sinking fund method?

A. Yes. I did not use the four per cent sinking fund method.

X Q. Did you make any estimate of the original cost of this property?

A. No.

X Q. Why not?

A. We made an attempt and found it was not practical to arrive at it; we could not get the facts.

[fol. 689a] X Q. Did you make any estimate of the historical cost and by that I mean the cost to be ascertained by applying to the prices prevailing in your inventory the prices obtaining at the time the property was installed?

A. No, we did not.

X Q. So your only estimate is reproduction cost new?

A. Reproduction cost new on the average prices prevailing, pre-war and 1920, is the way I have arrived at my estimate. If the Commission asks for it I have of course the basis on which this was arrived, it giving both the pre-war and the 1920 prices.

X Q. That is the details and all that is worked up to this conclusion as shown in these exhibits?

A. Yes.

X Q. And they would be available for our engineers and the Commission's engineers at any time they want to check them?

A. Certainly for the Commission's engineers.

X Q. Well is that data available to our engineers, the engineers employed by the City of Johnstown?

A. You will have to ask my client as to that, I am not in position to answer that.

By Mr. Cunningham: Well I will ask the question now. We certainly want to be in position to check on some of this. We have nothing but summaries here.

By Mr. Gordon: Mr. Gannett and Mr. Fleming can see anything we have got. These gentlemen you have named are persona grata.

[fol. 690a] By Mr. Cunningham:

X Q. Now Mr. Uebelacker, see if I understand Exhibit J-22 correctly. Do you figure that this company is entitled to a return of ten percent on the fair value of its production system?

A. I do.

X Q. Do you figure that it is entitled to eight per cent return upon the fair value of its transmission system?

A. I do.

X Q. And eight per cent on the distribution system?

A. I do.

X Q. And eight per cent on the working capital?

A. Yes.

X Q. And eight per cent on general property?

A. I do.

X Q. And ten per cent on the leasehold and natural gas rights?

A. I do.

X Q. Therefore I understand it to be your opinion that a fair return in this case is eight per cent on the value of the items you have

indicated at eight per cent and ten per cent on the value of the items indicated at ten per cent.

A. Generally classified on the items included in the production, which includes the value of gas property and on which the risk is greater, ten per cent. On the items included in transmission and distribution on which the risk is less, eight per cent.

X Q. Yes, In other words, this price per thousand cubic feet [fols. 691a-694a] which you have testified to as being in your opinion a reasonable price is intended to produce these returns?

A. It is.

X Q. From eight to ten per cent?

A. It is.

X Q. Upon the value of the property as indicated by these estimates which you have put in of the reproduction cost new?

A. That is correct.

X Q. So that if as a matter of fact in ascertaining the fair value accrued depreciation should be deducted from this estimate, and if the four per cent sinking fund method should be applied in estimating annual depreciation, and if the return allowed as a fair return is seven per cent, then this price is entirely too high, isn't it?

A. Somewhat higher than would result from this allowance but not entirely too high for the economic considerations that are involved.

[fol. 695a] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Complaint Dockets, Nos. 1083-1098

In re

C 1083

CAMBRIA STEEL COMPANY

vs.

JOHNSTOWN FUEL AND SUPPLY COMPANY, PEOPLES NATURAL GAS COMPANY,

and

C 1089

LOUIS FRANKE, Mayor,

vs.

JOHNSTOWN FUEL AND SUPPLY COMPANY and PEOPLES NATURAL GAS COMPANY

Alleging Unjust and Unreasonable Increase in Rates for Gas Service to Both Domestic and Industrial Consumers

Stenographic Report of Hearing Held in the Public Service Commission Building, at Harrisburg, Pa., Wednesday, September 13, 1921

Commissioner Reed Presiding

[fol. 696a] Appearances:

J. B. Cunningham, Esq., for the City of Johnstown.
Tilman K. Saylor, Esq., City Solicitor, for City of Johnstown.
David I. McCahill, Esq., for Johnstown Fuel and Supply Company.
George B. Gordon, Esq., for the Peoples Natural Gas Company.

TESTIMONY OF P. J. MORRISEY

P. J. MORRISEY, a witness called on behalf of the Complainant, being duly sworn, was examined and testified as follows:

Direct examination by Mr. Cunningham:

Q. You are the Vice President and General Manager of the Johnstown Fuel and Supply Company?
A. No, not now, I was Vice President, but I am now a director.
Q. Now you are a director. What do you have to do with the

management of the Johnstown Fuel and Supply Company at the present time?

A. General work.

Q. You are familiar with the affairs of the Johnstown Fuel and Supply Company in the furnishing of its service in Johonstown and vicinity?

A. Yes, sir.

Q. How long have you been familiar with it?

A. Ten years.

[fol. 697a] Q. Mr. Morrissey, have you recently or since the last hearing in Pittsburgh on Thursday, secured any data with reference to the price of coal at Johnstown as compared to Altoona?

A. Yes, sir.

Q. What do you find is the comparison of those prices?

A. We find that in Johnstown they are paying from $3.50 to $4.50 per ton, delivered.

Q. For coal?

A. For coal for domestic purposes. In Johnstown for the same grade of coal we are paying $4.50 to $5.25 a ton.

Q. Is that delivered?

A. Delivered at the house. That is for the "C" prime and "B" and the "E" coal. In Altoona they pay $7.00 per ton for run-of-mine, and for lump, Greensburg gas coal, $10.00 a ton.

Q. The same grades of coal which are used by most of the people, if not all the people, in Johnstown, they can buy in Altoona for $4.00 and $4.50 a ton?

A. No, $4.50 to $5.25 a ton.

Q. And that same coal costs them in Johnstown how much?

A. $3.50 to $4.50 a ton.

Q. What is the freight rate between Greensburg and Altoona, do you know?

A. $2.24 a ton.

Q. What is the freight rate between Greensburg and Johnstown?

A. Well, I do not know; it would be about the same, the differential would not be on the mileage basis, but from Johnstown to Altoona, it is $2.10.

[fol. 698a] Q. The difference in the price of the coal at Altoona and at Johnstown, that is for Greensburg coal is made up entirely in the difference of freight rate?

A. Greensburg is not used for domestic purposes in Johnstown.

Q. But if it were?

A. Yes, sir.

Q. They both would pay the same price for Greensburg plus the freight rate for delivery?

A. The coal that is used in Altoona is loaded at a place called Buckwaner, at the top of the mountain and transported over the State Highway extending from the mines to Altoona, the coal being trucked into the City.

Q. What price is that coal?

A. $4.50 to $5.00 a ton, delivered. The truck owner pays $3.50 at the mine for that coal.

Q. How long have you been with the Johnstown Fuel and Supply Company?

A. Ten years.

Q. In other words since——

A. 1911.

Q. At the time this contract was entered into in 1909—that is the contract between the Johnstown Fuel and Supply Company and the Peoples Natural Gas Company, do you know how many artificial consumers the Citizens Light & Power Company of Pennsylvania had, consuming artificial gas at Johnstown?

A. They had in 1909, 2,645 consumers in the artificial gas service.

Q. At that time how many natural gas consumers were there in Johnstown?

A. 3,060.

[fol. 699a] Q. Will you just give us by years a comparison of the artificial consumers served by the Citizens' Company and the number of natural gas consumers served by the Johnstown Fuel and Supply Company?

A. Starting with 1909?

Q. Yes, you have given us those figures, give us the next year?

A. In 1910 there were 2,300 artificial gas consumers and 3,665 natural gas consumers; in 1911, 1,670 artificial gas consumers and 5,080 natural gas consumers; in 1912, 1,520 artificial gas consumers and 5,390 natural gas consumers; in 1913 there were 811 artificial gas consumers and 6,290 natural gas consumers; in 1914, 118 artificial gas consumers and 7,145 natural gas consumers. Nineteen fourteen was the last year in which artificial gas was supplied. These figures are up to June 1st of each year.

By Judge Reed:

Q. What is the present number of natural gas consumers?

A. The present number as of September 1st, 1921, is 11,300.

By Mr. Cunningham:

Q. Mr. Morrissey, were the people who were using artificial gas switched and put on the natural gas company's line and served natural gas from then on?

A. Yes, sir.

Q. In other words the artificial gas was discontinued to them?

A. Yes, sir.

Q. And from that time on they were supplied with natural gas?

[fol. 700a] A. Yes, sir.

Q. Why was this done, do you know?

A. We were urged very strongly by the Peoples Natural Gas Company to increase the number of natural gas consumers, especially by changing the artificial gas consumers to natural gas consumers.

Q. You were present at the hearing on July 6, 1921, at Pittsburgh at which time General Pew, of the Natural Gas Company, showed certain letters to you?

A. Yes, sir.
Q. Do you recall those letters?
A. Yes, sir.
Q. Was it in compliance with the suggestion contained in those letters from the Peoples Natural Gas Company, that you discontinued the artificial supply and furnished all the consumers with natural gas?
A. Yes, sir.
Q. You were constantly urged by the Peoples Natural Gas Company to do that?
A. Yes, sir.
Q. And in compliance with their urging you did do it?
A. Yes, sir.

By Judge Reed:

Q. As I understand the Johnstown Fuel & Gas Company originally furnished the artificial gas.
By Mr. Cunningham: The affiliated company did.

[fol. 701a] By Mr. Cunningham:

Q. Mr. Morrissey, is the Citizens Light, Heat and Power Company now in existence?
A. No.
Q. What has become of it?
A. It was merged with two other companies, forming the Penn Public Service Corporation.
Q. In 1909 and from that time down to the time it was merged, was it an affiliated company with the Johnstown Fuel and Supply Company?
A. It owned stock in the Johnstown Fuel and Supply Company.
Q. And the Citizens Light, Heat & Power Company is the Company mentioned in the contract of 1909 providing that the two companies should be merged?
A. Yes, sir.
Q. That is the Company referred to in that contract?
A. Yes, sir.
Q. These two companies were directed and operated by the same officers and general managers?
A. Yes, sir.
Q. And the property of the artificial gas plant in Johnstown is now leased and used by the Johnstown Fuel Supply Company far as the Johnstown Fuel Supply Company can use that property in supplying artificial gas?
A. Yes, sir.
Q. And the mains in the street, and so forth?
A. Yes, sir.
Q. Mr. Morrissey, have you made any estimate so far as the in-
[fol. 702a] vestment, the approximate investment of consumers in Johnstown is concerned in consuming natural gas?
A. I have.

Q. What is your estimate as to the value of those appliances?

A. Between $750,000 and $1,000,000.

Q. And if the supply of natural gas to Johnstown were discontinued and it would be impracticable to supply artificial gas, that investment would have been made by the consumers and would be of no value, is that correct?

A. That is correct.

Q. Do you know in a general way, Mr. Morrissey, the general nature of the use the people of Johnstown are putting natural gas to; in other words are they using it largely for heating and a small amount for cooking or largely for cooking and a small amount for heating?

A. The greater percentage is used for cooking and water heating.

By Judge Reed:

Q. In what appliances have the consumers this amount of money invested?

A. Stoves, water heaters and hot plates.

By Mr. Cunningham:

Q. Would you say there is no considerable amount of gas used in Johnstown now for house heating?

A. Yes, in the winter time there is probably forty million feet a month used for heating.

Q. And what is the total approximate amount per month used in the winter time?

[fol. 703a] A. The maximum has been about 107,000,000.

Q. That is, less than 40 per cent is used for heating?

A. Yes, sir.

Q. And the balance is used for cooking and lighting?

A. Cooking and water heating.

Q. Is no gas used for lighting at all?

A. A small amount.

Q. With incandescent burners?

A. Yes, sir.

Q. And is this gas in Johnstown used by large consumers or small consumers?

A. That would be a rather difficult question to answer. You would have to tell me what you mean by large consumers.

Q. I mean is it used by small houses and small cottages as well as in big mansions?

A. Oh, yes.

Q. It is used generally in the small houses?

A. Yes, out of an available population of 90,000 we are supplying approximately 75,000.

By Judge Reed:

Q. You do not have the different percentages of that 75,000 that are using a certain percentage of the gas, that is consumers, for in-

stance, the number of consumers that are using less than 50,000 and those using 100,000 cubic feet a year.

A. We have made such tabulations, your honor, and I could furnish them, if you desire them.

[fol. 704a] By Mr. Cunningham: I think we ought to have them.

By Judge Reed:

Q. I do not know that it is very important. I thought you had it there.

A. It was not brought down, but we have such a tabulation.

By Mr. Cunningham:

Q. I suggest that you bring that down and file it as a part of the record?

A. Making that division on an annual consumption.

By Judge Reed:

Q. If Counsel advises you to do that you can make it; I do not know that it is important. It might show the number of consumers that are using only a small amount of gas annually.

By Mr. Cunningham:

Q. Mr. Morrissey, about what per cent of your winter load do you also carry in the summer?

A. About sixty per cent.

Q. About sixty per cent continuously, the year around?

A. Yes, sir.

[fol. 705a] Cross-examination by Mr. Gordon:

Q. Mr. Morrissey, the contract between the Johnstown Fuel Supply Company and the Peoples Natural Gas Company provided for a revision in the price of gas to the Johnstown Company providing the Johnstown Company secured a certain number of consumers, 7,500 consumers?

A. No, there is no such provision.

Q. Did not the Johnstown Company pay more for their gas during the years 1909, 1910, 1911, 1912 and 1913, per thousand cubic feet than they did in the year 1914, after your company had secured 7,500 consumers?

A. They paid the same, 70 per cent. of the gross receipts. You may find that in section 13.

Q. I will just call your attention by reading to you a portion of section 12 of the contract between the two companies. I will just read the latter part, "The buyer agrees to pay to the seller at its office in Pittsburgh, Pennsylvania, on or before the 20th day of each and every month during the continuance of this contract, until January 12, 1912, inclusive, an amount equal to 70 per cent of the gross actual receipts from the sale of natural gas to consumers at domestic

rates during the calendar month next preceding and on the 20th day of each and every month, from January 21 to August 30, inclusive, to pay an amount equal to 75 per cent. of its gross receipts from sales of natural gas to consumers during the calendar month next preceding, providing, however, that if and so long as the seller supplies the requirements of 7,500 consumers of natural gas, and so forth, the buyer shall be obligated to pay to the seller only 70 per cent. of its [fol. 706a] gross receipts from sales of natural gas to the consumers at domestic rates during the calendar month next preceding." * * * Now do you recall? When did your company first secure 7,500 domestic consumers?

A. Some time in 1913.

Q. So that after January 21 until the time your Company did secure 7,500 consumers, you were to pay 75 per cent. of the actual gross receipts for natural gas to the Peoples Company?

A. I do not remember that. There were no payments made except the 70 per cent.

Q. You recall the contract provided for such a payment?

A. Yes, sir.

Q. And so it was to the advantage of your company to increase your number of consumers over and above 7,500?

A. Yes, sir.

Q. After January, 1912, so far as the price of natural gas was concerned, and it was in that connection that Mr. Pew was urging upon you the importance of gaining more consumers.

A. I do not know as it was in that connection or not. I know he did urge us very strongly.

Q. As a matter of fact in 1914, up to June 30th, of that year, you had not secured 7,500 consumers, had you?

A. On June 1st, 1914, we had 7,145.

Q. And do you know how many you had in 1915?

A. 7,840 on June 1st.

Q. And do you know when the 7,500 point was reached?

A. Sometime during the year 1914. The artificial gas consumers [fol. 707a] had been changed from the natural gas system early in 1914.

Q. I believe you testified that during a recent investigation you determined that the investment of the Johnstown consumers in gas equipment such as stoves, water heaters, hot plates, etc., amounted to between seven hundred and fifty thousand dollars and one million dollars?

A. I did.

Q. And now that same equipment could be used in connection with artificial gas as well as with natural gas?

A. Yes, if you could get the artificial gas, and make certain changes in it.

Q. Mr. Morrissey, how are you able to determine how much gas is used for heating houses, that is what percentage of the gas is used for heating houses?

A. By making a comparison of the summer and winter consumption by consumers.

Q. In what way. Just explain your method of arriving at that?

A. On the basis of the cubic feet consumed per day per consumer the average for the whole system. For example, in January, 1920, the sales were 107,800,000 cubic feet. In July they were 44,466,000; in August, 1920, they were 47,703,000, showing practically a constant consumption during the summer months, while during the Fall and Winter there shows an ascending scale, to a peak in the Winter, and then a descending scale until the Spring and Summer months are reached.

Q. And the excess used in the Winter months over the average [fol. 708a] Summer requirements you attribute a portion for heating purposes?

A. Yes, sir.

By Mr. Gordon: That is all.

Testimony of H. J. Horn

H. J. Horn, a witness called on behalf of the complainant, being duly sworn, was examined and testified as follows:

Direct examination by Mr. Cunningham:

Q. Mr. Horn, what is your profession?

A. Engineer.

Q. With what firm of engineers are you associated?

A. Gannett, Seelye & Fleming.

Q. In Harrisburg?

A. In Harrisburg.

Q. That firm, I believe, has been representing the City of Johnstown in this controversy?

A. Yes, sir.

Q. Have you been assigned by that firm particularly to the gas end of the case?

A. Yes, sir, a certain part of the case.

Q. I wish you would tell the Commission in a general way what [fol. 709a] you found in the City of Johnstown with respect to the existence of an artificial gas plant in that city?

A. The old generating plants had been worn out, have become obsolete and been removed, and the only plant units in existence at the present are the old ones, and I think a very small part of it could be used over again.

Q. When did you make your first inspection of the old artificial gas plant in Johnstown?

A. Sometime last winter, I do not remember the exact date.

Q. What, if anything, did you learn with respect to the distribution system in the streets there?

A. We did not make any inspection of the distribution system—Oh, yes, I see what you mean. We found with respect to our studies,

that certain of the mains are owned by the Johnston Fuel Supply Company and are in service at present with the natural gas people. Certain of the other mains are owned by the subsidiary company and are classed as leased, but probably they are also used at the present time. Certain of those lines of the subsidiary company are not in use at the present time, and they were not included in the Company's valuation, but in our studies concerning the use of artificial gas, certain of those lines would have to be thrown into service which are not being used at present.

Q. You use the term "subsidiary company", just what company do you refer to, the old artificial gas company?

A. Yes, I do not remember the exact name, I think it was the Citizens Company.

[fol. 710a] Q. Well, call it the Citizens Company for the purposes of this case, although it was not, strictly speaking, a subsidiary of the Johnstown Fuel Supply Company, but rather a predecessor?

A. Yes, that is rather more correct.

Q. Mr. McCahill says the parent company. My recollection is, and perhaps you can correct me if I am wrong, that when this case started some years ago and the question before the Commission was the value of the company for rate-making purposes, of the property of the Johnstown Fuel Supply Company, that it appeared in that case that that Company, the Johnstown Fuel Supply Company owned certain property in the shape of a distribution system and so on and had leased from the citizens Company other portions of its distribution system. Am I correct?

A. Yes, sir.

Q. And for the purpose of this rate case you treat it all as belonging to the Johnstown Fuel Supply Company?

A. Yes, we have classified it as owned and leased property?

Q. At that itme you were dealing with all that was then in service?

A. Yes, sir.

Q. And in this valuation that was made originally in this case, it was classified as owned and leased property?

A. Yes, sir.

Q. Some of that property is still there today, and can still be classified as owned and leased property so far as the Johnstown Fuel Supply Company is concerned.

A. You mean is not being used at present.

[fol. 711a] Q. There is some that is being used and some that is not?

A. Yes, sir; that is true.

Q. Part of this property that was originally used by the Citizens Company to make and distribute artificial gas is now being used by the Johnstown Fuel Supply Company for the purpose of distributing natural gas?

A. Yes, that is correct?

Q. And there is some property in the shape of pipes in the ground that were used originally for the manufacture and distribution of

artificial gas and which property is not now in use in the distribution of the natural gas?

A. Yes, sir.

Q. Now, I wish you would state again just in what condition you found this old artificial gas plant, was there anything left of it when you were there?

A. No, sir. I recently made an inspection and there was some old water gas machines which had become obsolete. In my last inspection I did not see these. They were stored over there in the yard. There is no generating plant at all there, only the holders and some of the buildings, and they now use some as machine shops.

Q. Do I understand from Mr. Morrissey's testimony, the witness who preceded you, that the manufacture and distribution of artificial gas was abandoned in 1914?

A. Yes, I am not sure as to the date.

Q. Now then from that time on, as we understand you, the whole plant has been disintegrating?

A. It was fairly well aged in 1914, if I remember correctly and [fol. 712a] lying idle, it naturally would disintegrate and go to pieces.

Q. Now Mr. Horn, have you made a study of the business of supplying the present consumers of natural gas in the City of Johnstown with artificial gas through the rehabilitation of this old plant?

A. I have.

Q. Have you also made a caluculation, valuation and so on for the purpose of ascertaining what artificial gas would approximately cost the consumers of natural gas in Johnstown?

A. I have.

Q. So that you are able then to make a statement to the Commission, as I understand you, of the cost of rehabilitating the old plant in the event that the natural gas supply was shut off, and what the effect of that would be in so far as the price of gas is concerned upon the consumers in the City of Johnstown?

A. Yes, sir.

Q. Have you reduced your study to exhibits so that you can present them to the Commission?

A. Yes, sir; the exhibit numbers probably will be wrong. I started with exhibit No. 1, and the numbers should continue after the exhibit by the City at the former hearing several years ago.

Q. Mr. Horn you have produced an exhibit here that has been marked "Complaint X-1 to 13;" (J-29) does this exhibit comprise the results of your study of the situation at Johnstown?

A. Yes, it does.

Q. Now, direct your attention first to X-1 (J-29) being the first sub-division of this exhibit, to sheet headed "Tables showing the [fol. 713a] amount of natural gas sold by the Johnstown Fuel Supply Company for the 12 months ending September 30, 1920. What does this sheet contain, in a general way?

A. It shows the domestic and commercial sales for heating, cooking and lighting, during the months from October, 1919, to September, 1920.

Q. On the next page have you brought that down?

A. On the next page I show the industrial consumption for the same period.

Q. The first page then contains the record of the sales to domestic and commercial consumers for heating, cooking and lighting?

A. Yes, sir.

Q. And the second page contains the industrial sales for the same period?

A. Yes, sir.

Q. And the next page X-1A (J-29) brings that data down to what time?

A. To July, 1921.

Q. And also the industrial sales data down to July, 1921, so that these pages then simply contain the data of the amount of sales for these various purposes?

A. Yes, sir.

Q. Divided into months?

A. Yes, sir.

Q. And covering with accuracy what Mr. Morrissey has testified to in a general way?

A. Yes, sir.

Q. Mr. Horn, I wish you would tell us what the average consumption in cubic feet has been per day per consumer during the period shown in this exhibit?

[fol. 714a] A. From October, 1919, to September, 1920, it was 214 cubic feet per day per consumer; for the period from October, 1920, to July, 1921, it was 217 cubic feet per day per consumer.

Q. Then, if I follow you this means that during this period the consumers of natural gas in Johnstown have been consuming on an average say 215 cubic feet per day per consumer?

A. Yes, sir.

Q. Now, have you made any effort to ascertain what the probable consumption in cubic feet per day per consumer would be of artificial gas?

A. Yes, sir; I have. That is in exhibit No. 2.

Q. That is "X2" (J-29)?

A. "X2" is a tabulation showing the consumption of artificial gas in I think some 32 gas companies in Pennsylvania, Ohio, New York and Tennessee and is worked out to give the cubic feet per consumer per year, cubic feet per consumer per day and cubic feet per capita per day. That table was used simply in making our studies of the size of the artificial plant necessary to supply Johnstown with artificial gas and we also took advantage of the studies made by Colonel Pratt, Chief Engineer of the East Ohio Gas Company of Cleveland.

Q. Now, in your opinion would the consumption of artificial gas be greater or less than the present consumption of natural gas?

A. By far less.

Q. Why?

A. Because the consumer of natural gas is used to a low priced gas with a high heating value and has become used to the inefficient

appliances and become generally careless of its use. When I say [fol. 715] "become careless of its use", I mean put to uses to which artificial gas is not put.

Q. In other words, because it is cheap and has a high heating capacity, they would use more of it than of the artificial gas at the higher price. Is that what you mean?

A. Yes, sir.

Q. Now, as a result of your studies and investigations what in your opinion would be the probable consumption per day per consumer of artificial gas, if the consumers in Johnstown were forced to change from natural gas to artificial gas?

A. It might probably run to 100 feet per consumer per day at the start of supplying artificial gas, but that seems to be in accordance with some studies made by Colonel Pratt and the plant would have to be provided with a sufficient capacity of that figure. But it is also shown that as the consumers begin to use this high-priced gas the consumption would decline. For that reason we have worked the cost out on four different bases, 100 feet per consumer per day, 90, 80 and 70. The chances are that the investment would have to take care of the 100 cubic feet per day and the consumption would be 70 cubic feet per day.

Q. So that at first you think they would use approximately 100 cubic feet per day, and then, finding out how much it would cost, they would begin to conserve more and more until they got down to about 70 cubic feet per day?

A. Yes, sir.

Q. Now, on the question of making an estimate of the amount of capital that would have to be invested in the rehabilitation of the old [fol. 716a] artificial plant at Johnstown, how have you gone about it, that is how have you treated the existing facilities that are there as compared with what would have to be supplied; how have you divided your elements?

A. We have schedules, the exhibits showing the estimated costs of the owned and leased property at present in service and the property owned by the Johnstown Fuel Supply Company and now in service.

Q. Is it in Exhibit 3 of this larger exhibit, Mr. Horn—Exhibit X (J-29)?

A. Yes, that is exhibit 3.

Q. Now, there I find a valuation showing what you have termed here in the first column "Agreed Cost;" what do you mean by that?

A. It is my understanding that the estimated original cost was agreed to at former hearings.

Q. I think it is possible you are mistaken about that. There has been no agreement as I recall as to the valuation.

A. Or conference?

Q. There may have been some conference, but these figures as I understand are taken from figures taken in this case in the earlier stages of the case?

A. Exhibits Nos. 3 and 4 are.

Q. I am not talking about No. 4 now. I am talking now about

Exhibit No. 3. That is, how you got these figures showing estimated, original cost, showing annual depreciation, accrued depreciation and the present fair value of the property—shown in Exhibit No. 3—forming the valuation of putting in this plant?

A. Yes, and to that I have added following estimated original [fol. 717a] costs annual depreciation, accrued depreciation and original cost, less accrued depreciation based upon the sinking fund method.

Q. That is, you mean of the exhibit which has been put in evidence, and which as I recall it, was put in by Prof. Allison. He did not take in accrued depreciation, and he calculated his annual depreciation by the straight line method?

A. Yes, I think that is correct.

Q. So that taking these figures as already in evidence in the case as a basis, you have calculated and checked accrued depreciation, first as you calculated annual depreciation by the 4 per cent method.

A. Yes, sir.

Q. What do you find to be the estimated original cost of the property now owned by the Johnstown Fuel Supply Company which could be used in the manufacture and distribution of artificial gas, less accrued depreciation?

A. $266,145.00

Q. Now, I direct your attention to section 4 of this exhibit and ask you what it shows?

A. It shows the estimated original cost and the cost of the property in service.

Q. That is the part that is now in existence that could be used for the distribution of artificial gas, but it is property that is not owned by the Johnstown Fuel Supply Company, but which it does hold under lease and could use.

A. Yes, and is used at present for the supply of natural gas.

Q. Does now use it?

A. Yes, sir.

[fol. 718a] Q. Did you get your fundamental figures for this exhibit from the exhibit already in evidence on the question of valuation of the property of the Johnsotwn Fuel Supply Company?

A. I did and made the same additions by figuring the annual and accrued depreciation by the sinking fund method at the bottom of the exhibit.

Q. Now, then, will you state what is the estimated original cost of the property shown in this section No. 4 less accrued depreciation and designated here as "leased property?"

A. $206,079.00.

Q. Now have you made any investigation of expenditures that have been made on additions to the plant of the Johnstown Fuel Supply Company since the valuation offered in evidence several years ago was made?

A. Yes, that is shown by section No. 5.

Q. Section No. 5 of this Exhibit No. X (J-29)?

A. Yes, sir.

Q. What do those expenditures amount to?

A. They amount to $40,739.58.

Q. Have you calculated any depreciation on that?

A. Yes, sir. I have calculated annual depreciation amounting to $732.00 and accrued depreciation of $1,492.00.

Q. Making the net value of the property thus purchased of what?

A. $39,247.58, and since September 30th, 1920, I understand there have been about $3,000.00 additional spent, but I have not brought the exhibit up to date.

Q. Then the items for which these expenditures were made are shown in the exhibit?

A. Yes, they are shown in detail in the exhibit.

[fol. 719a] Q. Now, these figures, as I understand you, are in substance as the estimated original cost of the property that is now in the City of Johnstown and capable of being used for the distribution of artificial gas if it should be necessary?

A. Yes, there may be some very small items which might have to be repaired or replaced, but substantially that is correct.

Q. Substantially it is property that is there in existence and could be used for either natural or artificial gas distribution?

A. Yes, sir.

Q. Do we understand, Mr. Horn, that in addition to the property included in the exhibits to which you have already referred, there is certain property in the City of Johnstown not now in use for distributing natural gas, which could be made available for use and used in the distribution of artificial gas?

A. Yes, sir; that is shown by Exhibit No. 6 of this exhibit X (J-29). Certain amounts of the 4-inch, 6-inch, 8-inch and 10-inch, we think would have to be reconnected if used in the distribution of artificial gas. We have not made a detailed study of each street of natural gas mains, but they would have to be reconnected if used. Then this exhibit also shows the estimated cost of the lot at the old plant.

Q. Of the what?

A. Of the real estate—the lot at the old plant, on which the new gas plant would be built, and also shows the estimated original cost of the storage holder that is there at present. I understand they are using that for the natural gas supply at the present time.

[fol. 720a] Q. Then this is an estimate of the original cost of the property that is available for use in the distribution of artificial gas, but which is not now actually in use?

A. Except for the fact that the holder has been thrown into use lately.

Q. Now what is the amount of your estimate of the original cost of the property set forth in detail in section 6 of this Exhibit X?

A. $151,348.00.

Q. What is the amount if you deduct the accrued depreciation?

A. $139,804.00.

Q. Now, Mr. Horn, what property, exclusive of the plant itself, would it be necessary for the Johnstown Fuel Supply Company to acquire in order to prepare itself to distribute natural gas?

A. That is shown in section 7. It would be necessary to build a new holder, not to replace the present one, but to provide additional holding capacity, and it would also be necessary to recalibrate the meters and to connect up and make some changes in the distribution system, and the total cost of these items, the estimated cost is $130,000.00.

Q. And there are shown the items themselves in your estimate and the cost is shown in section 7 of Exhibit X (J-29)?

A. Yes, sir.

Q. That brings us, I think, to the matter of the gas plant itself. We have covered the distribution system and the holder. Now, in order that the City of Johnstown might be served with artificial gas, what would be necessary in the way of the construction of a gas plant?

[fol. 721a] A. We estimated the cost of a coal gas plant of two different types. Section No. 8 shows the estimated cost of intermittent vertical retort plant. The time required for designing and letting contract and constructing this plant would be probably from 12 to 15 months as a minimum. The entire section number 8 shows that the cost of the 2,000,000 cubic feet per day plant, plus contractor's profits and engineering fees, would be $1,078,700.00. That is based on an estimated consumption of 100 cubic feet per consumer per day.

Q. That is in relation, as I understand, to your previous testimony, that a plant would probably have to be designed of sufficient capacity to provide consumption of 100 cubic feet per day per consumer, is that the idea.

A. Yes, sir.

Q. And you estimate that such a plant of this kind, that is a vertical retort plant, would cost $1,078,700.00?

A. Yes, sir.

Q. Have you made any estimate of what a plant of sufficient capacity to supply only 90 cubic feet per day per consumer would cost?

A. Yes, sir; that is $995,000.00.

Q. And have you made an estimate of a similar nature for a plant designed to supply 80 cubic feet per consumer per day?

A. $906,000.00.

Q. And have you made a similar estimate for one designed to supply 70 cubic feet per consumer per day?

A. $815,000.00.

[fol. 722a] Q. Now, in addition to making an estimate of the cost of these plants, have you taken into consideration the matter of return and depreciation?

A. Yes, we figured the fixed charges, that is return on investment at 8 per cent, and annual depreciation allowing for 30 years as the average life of the plant.

Q. Now let us take that with reference to your first calculation of a plant designed to supply 100 cubic feet per consumer per day; I see an item here in this exhibit of 8 per cent. interest, $86,296.00, now is that simply the return that you figure on that investment?

A. Yes, sir.

Q. That 8 per cent., in other words, is the return to the owners for the investment, is that it?

A. Yes, sir.

Q. Then the next item is your calculation of annual depreciation on that plant?

A. Yes, sir; that is $19,200.00.

Q. Making a total of $105,496.00 the amount of revenue necessary to be produced from the sale of gas for the two purposes annually, to wit, a return and providing for the depreciation?

A. Yes, that figure represents the fixed charges on the plant of that size.

Q. There are no operating expenses included in those figures?

A. No, sir.

Q. What part of the plant is it that you are talking about that cost $1,078,700.00?

A. Just the generating plant alone.

Q. Just the generating plant alone, but the particular purpose of [fol. 723a] my inquiry is to ask you whether in these figures, to wit, this $105,496.00, you have included anything for operating costs?

A. No, sir; I have not.

Q. So that that charge will be upon an investment and depreciation of the generating part of the plant?

A. Yes, sir.

Q. You have given the same calculation based upon a plant designed to supply 90 cubic feet, 80 cubic feet and 70 cubic feet per consumer per day, have you?

A. Yes, sir.

Q. Now turn to section 9 of this exhibit; what have you shown there?

A. In section 9 I have shown the estimated operating expenses for the vertical retort plant.

Q. That is the operating expenses for a plant of the kind you have just been talking about?

A. Yes, these operating expenses apply only to the generating plant.

Q. Now, in that connection have you taken into consideration the value of by-product that would be produced and things of that kind?

A. Yes, that has been accounted for.

Q. Then, do we understand, Mr. Horn, from this section of this exhibit that with relation to the cost of operation of the generating plant, that you have been asked about, with a capacity of 100 cubic feet per consumer per day, that you estimate the cost of operating that generating plant as distinguished from the entire system, at 39.4 cents for each thousand cubic feet of gas sold; is that what this exhibit means?

A. Yes, that is based on the average consumption of 100 cubic feet per day per consumer.

[fol. 724a] Q. And then have you taken a plan based on the average consumption of 90 cubic feet per consumer per day?

A. Yes.

Q. The average cost of operating that generating plant per thousand sold would be how much?

A. 41.8 cents.

Q. Yes, and so on, running up 46.7 cents per thousand cubic feet of gas sold for the smallest sized plant that you have considered in your calculations, to wit, the 70 cubic feet per day plant?

A. Yes, sir.

Q. Now ,have you made any calculation of the cost of building the type of generating plant known as the horizontal gas oven type?

A. Yes, section No. 10 shows similar estimates for the horizontal gas oven type plant.

Q. Referring then to section 10 of this exhibit X (J-29), what do you estimate the cost of building this type of plant to give a consumption of 100 cubic feet per day would be?

A. $920,000.00

Q. Now, are you calculating what you consider a fair return from that, and also made a calculation on accrued depreciation?

A. Yes, the return is $73,600.00, the annual depreciation is $16,376.00, a total of $89,976.00.

Q. That does not include anything for operating expenses?

A. No, sir.

Q. Now have you shown in this section 10 of Exhibit X (J-29) some calculations of plant to meet a consumption of 90 cubic feet [fol. 725a] per day, 80 cubic feet per day and 70 cubic feet per day per consumer respectively?

A. Yes, sir.

Q. And what is your estimate of a 90 cubic feet per consumer per day consumption?

A. The total cost and depreciation, $83,130.00.

Q. What would be the cost of the plant?

A. The cost of the plant would be $850,000.00.

Q. And for an 80 cubic foot per day per consumer plant?

A. $775,000.00.

Q. And for a 70 cubic feet per day per consumer plant.

A. $695,000.00.

Q. Have you made a calculation of the estimated cost of operating these several generating plants?

A. Yes, section No. 10 shows the estimated operating expenses for the horizontal gas ovens.

Q. Section No. 11 of your Exhibit X (J-29) shows your estimate of the cost of operating this kind of generating plant?

A. Yes, sir.

Q. And this exhibit shows your estimate per 100 cubic feet of gas sold of the first type of the first capacity, I am referring to, to wit 100 cubic feet per day, that would be 45.2 cents; is that correct?

A. Yes, sir.

Q. And running up to 52.6 cents for a 70 cubic feet per day per consumer consumption?

A Yes, sir.

Q. Now, in addition to the cost of operating these generating plants, have you made any calculation of the general cost incurred,

[fol. 726a] or that would be incurred in the distributing of the gas, and the general expenses of operation?

A. Yes, I have estimated the expense for distribution of artificial gas at $100,000.00 per year.

Q. How is that?

A. $100,000.00 per year, shown in section 12.

Q. In this section 12 of Exhibit X (J-29) I find a statement here of distributing expenses and so on for 12 months ending September 30th, 1920, of $92,055.51; what is that?

A. That is the actual operating expenses for that 12-month period, operating expenses covering the items shown.

Q. And now what do you estimate to be the annual operating expenses for the distribution of artificial gas?

A. To cover the same items as shown in the $92,000.00, we estimate the expenses for artificial gas to be $100,000.00.

Q. Do you mean manufacturing or distribution alone?

A. Distribution alone for the 12 months ending September 30th, 1920.

Q. So that there may be no misunderstanding of your testimony, you have separated these estimated costs of operating and divided them to show the estimated cost of operating generating plants themselves, separate and distinct from the distribution systems; then you have also made an estimate of the cost of operating the distribution system?

A. Yes, distribution and general expenses and so on.

Q. Distribution and general expenses, and they are shown in [fol. 727a] this section No. 12 of this Exhibit X (J-29)?

A. Yes.

Q. Now, I want to draw your attention to section 13 of Exhibit X and I ask you whether or not it is a summary of the matters to which you have already referred here, shown more in detail, of all sections up to 12, inclusive of this exhibit?

A. Yes, it is.

Q. So that this last section is intended to give the Commission a summary of the results of your study of this situation?

A. Yes, sir.

Q. It is intended to show, if I understand your testimony, the price that it would probably be necessary to charge consumers in Johnstown for artificial gas?

A. Yes, sir.

Q. Now, how is it originated? I find a column here headed 100 cubic feet per consumer per day. Now what is that intended to show?

A. That is intended to show the net sale price per thousand cubic feet, if the consumption is 100 cubic feet per consumer per day.

Q. And that net sale price would be how much?

A. $1.21; that is if the intermittent vertical report plant were used, or $1.23 for a horizontal gas oven shown in the fifth column.

Q. Now, to get at that, do I understand that you have taken the estimated original cost of these various items of property; for in-

stance, the owned property shown in Exhibit 3, the leased property of Exhibit 4, the capital charges shown in Exhibit 5, the existing [fol. 728a] property not now used, as shown in Exhibit 6, and the cost of the new holder and other new property necessary, as shown in Exhibit 7; then taking into consideration the return or operating expenses, both for operating the generating plants themselves and the other expenses, and you arrive at a sale price of $1.21?

A. Based on that volume of sales per consumer per day.

Q. Now, that is on the estimation that they would use 100 cubic feet per consumer per day, and that it is made in a vertical retort plant?

A. Yes sir.

By Judge Reed:

Q. $1.21 per thousand cubic feet?

A. Yes, sir.

By Mr. Cunningham:

Q. $1.21 per thousand cubic feet?

A. Yes, sir.

Q. Then if it was made in the other type, if the other type should be adopted, to wit, the horizontal gas oven, the price would be $1.23 per thousand cubic feet?

A. Yes, sir.

Q. Now, based upon an assumed consumption of 90 cubic feet per consumer per day, what would the price be for a vertical retort generating plant per one thousand cubic feet?

A. $1.30.

Q. What would it be if the horizontal type were used?

A. $1.32.

[fol. 729a] A. On an assumed consumption of 80 cubic feet per consumer per day, what would the cost be if made with the vertical retort plant?

A. $1.40.

By Judge Reed:

Q. You mean that is what it would cost or what would be the net sale price to consumers?

By Mr. Cunningham: I have not used the words "what it would cost." I should have said what price would have to be charged to the consumer, or what it would cost the consumer.

By Mr. Cunningham:

Q. What would be the price of gas if made in a vertical retort plant, to the consumer?

A. $1.40.

Q. What would be the price to the consumer if made in a horizontal type plant?

A. $1.42.

Q. Now, on a consumption of 70 cubic feet per consumer per day, what would be the price of a thousand cubic feet of gas to the consumer, if made in a vertical retort plant?

A. $1.52.

Q. And if made in a horizontal plant?

A. $1.54.

Q. So that this exhibit shows, if I understand your testimony, that if the use of natural gas were abandoned in Johnstown, and an artificial plant erected to supply the consumers there, the consumers [fol. 730a] would have to pay for that artificial gas $1.21 per thousand cubic feet to $1.54 per thousand cubic feet?

A. Yes, sir.

Q That is your opinion of what would be the price of gas to the consumer in order to give a fair return to the owners of the plant and the operating expenses?

A. Yes, sir; it would vary a little in cost price, because the price of coal would change and other such items.

Q. But as near as you can estimate, that would be a fair price for the consumer to pay for his gas—it would lie within that range—in the event these consumers were obliged to cease using natural and undertake the use of artificial gas in lieu of the gas that they are now using?

A. Yes, sir.

Q. Mr. Horn, did you investigate the gas situation in Altoona—that is, with respect to the question of whether or not there is an artificial gas plant now in operation in Altoona?

A. Yes, I went to Altoona and visited that plant and saw it in operation.

By Mr. Cunningham: There is a generating plant there that is now supplying certain consumers at least in the city of Altoona with artificial gas. Are there any other questions on this valuation, Mr. Commissioner, that I shall bring out.

[fol. 731a] By the Commissioner: If I understand your testimony correctly, Mr. Horn, you have ascertained, as nearly as you could at least, the original cost of the property owned by the Johnstown Fuel & Gas Company, to be $266,000.00.

By Mr. McCahill: Perhaps we could explain that to your honor. When this case was first brought the engineers endeavored to determine the value of the property of the Johnstown Fuel Supply Company and the engineers of the City and the Company went into detail as to the property which they then owned and they tried to arrive at what it would cost at the time it was built, and they have practically reached an agreement in that. They had agreed on a great many items, but could not agree on the amount of the intangibles, and that valuation made by the City has been introduced in evidence. That was in two parts, the part of the Johnstown Fuel Supply Company and the part that was owned by the Citizens' Company and leased by the Johnstown Fuel Supply Company for the

supply of natural gas. As I understand, Mr. Horn, these figures were taken from that valuation, which were substantially agreed to except for the intangibles, that were to be charged.

By Judge Reed: Then, as I understand the testimony, the owned and leased property, including the additions that have been made to it, were up until what time?
[fol. 732a] By the Witness: September 30, 1920.
By Judge Reed: Up until September 30th, 1920, aggregating about $511,000.00.
By Mr. Cunningham: Yes, $266,000.00 plus $206,000.00, plus $39,000.00 and that is limited entirely, your honor, to distributing mains.

By Judge Reed: I understand that is all the property that the Johnstown Fuel Supply Company is devoting to the public service up to September 30th, 1920.
By Mr. McCahill: I understand that the holder which was built for the artificial plant was not included in these figures originally, but have been since, as testified to by Mr. Horn.
By the Witness: That is correct.
By Judge Reed: Just in round numbers for my own information, this is the valuation of the Johnstown Fuel & Supply Company property owned and leased, which is used in the public service?
[fol. 733a] By the Witness: That is the depreciated value, approximately $551,000.00.

By Mr. McCahill:

Q. This includes the holder?
A. That includes the holder, but not gas mains.
Q. Does that include any figures on plant?
A. Just the mere plant as found. It includes—

By Judge Reed: I am just asking for my own information at the present time. I understand that the testimony being offered here is bearing on the question of the jurisdiction in the case, and in answer to the testimony that was offered previously.

By Mr. McCahill: No, it is offered, for, as I understand it, upon the question whether or not the Commission has jurisdiction, and whether the Peoples Natural Gas Company should be permitted—

By Judge Reed: On the question of jurisdiction—whether the Commission has jurisdiction to compel the furnishing and continuance of this gas.
By Mr. Cunningham: It is primarily for valuation purposes. It is offered to show the hardship on the consumer if they have to change from artificial to natural gas. Now we are here to show [fol. 734a] that—first by showing approximately what natural gas will cost—and we are showing that by showing what expenditures would have to be made and arrive as nearly as possible at the probable price to the consumer.

By Judge Reed: And show that in the record that they could get natural gas for 50 cents per thousand and still be making money.

By Mr. Cunningham: There is no doubt about that. In connection with the testimony of this witness, I offer in evidence complainant's Exhibit X.

By Mr. McCahill: I would like to have it noted on the record that we do not object to this except that it can be taken only as the minimum. These figures are not agreed to by the Johnstown Fuel Supply Company as the maximum value of its property either for the purpose of fixing rates or for the purpose for which they were originally taken, with the understanding that either the value as shown, of the present property or rate of return, annual depreciation and the accrued depreciation are not binding as to the maximum amount, on the Johnstown Fuel Supply Company.

By Mr. McCahill:

Q. Mr. Horn, what is the relative heating value of natural gas as compared with artificial gas?

A. Natural gas is estimated at 1,100 B. t.'s and the present estimate for artificial gas is 525.

[fol. 735a] By Judge Reed:

Q. It is pretty nearly twice?

A. Yes, sir.

By Mr. McCahill:

Q. So that your figure here—$1.21 per thousand cubic feet—for artificial gas, would be equivalent to $2.42 for natural gas, based upon the heating value of the two.

A. Some, of course, is different.

Q. Assuming that they have to use twice as much to secure the same result?

A. To secure the same number of heat units.

Q. Your figures here are based upon—that is, your total figures here are based upon a plant constructed for the purpose of furnishing 100 cubic feet per consumer per day and you are figuring $1.21, as based upon that case?

A. Yes, sir.

Q. I also understand you to say that it is you opinion that as soon as the consumers were transferred from natural gas to artificial gas, they would probably require 100 cubic feet per day, but later on when they saw how expensive it was and for other reasons they would gradually drop down until they would come around 70 cubic feet per day; is that correct?

A. Yes, that is my opinion.

Q. So that it would be necessary to construct a plant large enough at the beginning to furnish 100 cubic feet per day per consumer and

eventually you would only be furnishing 70 cubic feet per day per consumer?

[fol. 736a] A. Yes. I have not made my answer, however, in that way, because the number of feet capacity might be made up by some temporary method of manufacture—such as water gas, but even that would be an additional charge, to what I show under the 70 cubic feet per consumer per day. My figure is merely corresponding.

Q. So that your figure for constructing a plant capable of supplying 100 cubic feet, and then say only 70 cubic feet, your rate of $1.21 is low.

A. Yes, sir.

Q. Now, is this plant, as suggested here as costing these figures, set forth to cover any expenses of business, or is it only large enough to cover any immediate needs?

A. It is only large enough to cover, I should say, several years ahead. It has some reserve capacity, but not for a great period ahead.

Q. So that a plant with a reserve capacity to take care of the reasonable future business would even be more expensive than this?

A. Yes, sir.

Q. Mr. Horn, have you had any experience in the last two or three years in estimating the financing of a gas plant?

A. I have not been directly connected with it.

Q. Do you know of any?

A. I have been in discussions of the financing of gas plants, our firm has, we have done some fianancing.

Q. You do not know of any gas company in the last two or three years, that could borrow money at 8 per cent?

[fol. 737a] A. I do not know that I am qualified to say anything about the rates on money; I have not particularly studied that.

Q. If it costs more than 8 per cent to get money to build such a plant, then your figures, the net cost to the consumer, the net sale price would have to be increased considerably?

A. Yes, they would.

By Mr. McCahill:

I think that is all.

TESTIMONY OF J. T. RAYBOLD

J. T. RAYBOLD, a witness called on behalf of the complainant, being duly sworn, was examined and testified as follows:

Direct examination by Mr. Cunningham:

Q. Mr. Raybold, what is your business?

A. Manager of the Altoona Gas Light & Fuel Company.

Q. You were subpœned to attend this hearing today?

A. I was.

Q. I want to ask you, Mr. Raybold, with respect to your artificial gas plant, as I understand that the plant you refer to is an artificial plant?

A. Yes, sir.

[fol. 738a] Q. About when was it built?

A. That I do not know.

Q. How long have you been manager of it?

A. I have been manager two years.

Q. Can you tell us the number of consumers that the artificial plant had at Altoona at the time the Peoples Natural Gas Company extended their line for natural gas into Altoona?

A. About 8,000 consumers.

By Judge Reed:

Q. 8,000 consumers?

A. Yes, sir; 8,049 in 1912.

By Mr. Cunningham:

Q. Now what effect on the number of consumers of the artificial plant had the introduction of natural gas into the City of Altoona—how rapidly did they drop down?

A. In 1913 we had 7,629; in 1914 we had 3,354; in 1915 we had 2,395; in 1916 we had 2,336; in 1917 we had 1,883; in 1918 we had 1,730; in 1919 we had 1,644; in 1920 we had 1,627; in 1921, that is at the present time, we have 1,517.

Q. Now what sort of a plant have you there, Mr. Raybold?

A. We have water gas.

Q. Where are your mains; I mean with reference to being in the streets or alleys?

A. They are in the streets, and avenues.

Q. Where are the mains of the Peoples Natural Gas Company?

A. Mostly in the alleys.

Q. About what is the approximate demand for gas in Altoona at the present time?

[fol. 739a] A. It is not very good.

Q. No, I think perhaps you do not understand my question. About how much gas is consumed there?

A. Both artificial and natural per day per consumer.

Q. Per day, anything of that kind?

A. Our consumption of artificial gas runs anywhere from 50 to 100 feet per consumer per day.

Q. Mr. Raybold, what I am trying to get at—perhaps I do not express it very clearly to you, is this: If the supply of natural gas to the City of Altoona should cease from any reason, would you with your artificial plant, be able to supply the consumers of gas as they now exist in Altoona?

A. We could on the lines that we cover; there are parts of the city that we do not cover at the present time.

Q. What parts of the city are they, outlying or central parts?

A. Outlying parts.

Q. Are they parts of the city that have grown up since your lines wer laid?

A. Mostly, yes, sir.

Q. Then are we to understand that with the exceptions of these outlying sections your company is in position to supply with artificial gas the consumers of gas in the City of Altoona in the event that the natural gas should be cut off.

A. By making some additional repairs and installing new boilers, and repairs to new purifying processes and other extensions in connection with this, I do not recall now, which might be necessary. There would have to be boilers installed, a purifying box repaired, [fol. 740a] some other expenses that might be necessary, because there has been no repairs made in the plant since the natural gas came in. We have shifted there until we have repairs that have to be made.

Q. Then, because of the introduction of natural gas your production has fallen off until there is no inducement to make repairs, no necessity for making repairs. However, for a going concern there you are in position to serve the greater part of the city with gas, even if natural gas were to be cut out?

A. Yes, sir.

Q. How many services have you installed. I mean how many service connections in property have you installed, which are no longer taking your gas?

A. I presume there are about 8,000.

Q. How many?

A. Possibly seven or eight thousand.

Q. Seven or eight thousand where the distribution of artificial gas has been discontinued?

A. Yes, sir.

Q. But these services are in place?

A. Yes, sir.

Q. Then we are to understand that the Peoples Company entered into direct competition with your Company and that your Company's consumers have gradually diminished in number since the introduction of natural gas?

A. They have.

[fol. 741a] Cross-examination by Mr. Gordon:

Q. Mr. Raybold, what is you selling price per thousand cubic feet?

A. $2.00 net; $2.10 gross.

Q. With your distribution, do you follow the lines of the Peoples Natural Gas Company, for the most part; that is, do your lines of the Artificial Gas plant duplicate or parallel these?

A. Yes, only ours are in the avenues and streets, and theirs are in the alleys.

By Mr. McCahill:

Q. Your lines were laid first, so that the Peoples are duplicating yours, rather than yours duplicating theirs?

A. Yes, sir.

By Mr. Cunningham: I think that is all the city of Johnstown has to offer on this question.

By Mr. McCahill: I would like to have the record show that after reading the discussion and paper of the Sitting Commissioner of July 6, that the two questions presented in this phase of the case, to-wit, whether the Commission still has jurisdiction, and if so whether they would permit the Peoples Natural Gas Company to discontinue. These two questions were the only questions involved in this particular phase of the case, and I am of the opinion that the testimony introduced by Mr. Gordon at the last hearing relative to the value is [fol. 742a] irrelevant, immaterial and incompetent at this time. I rely entirely upon the statement of counsel, I did not read this paper myself, but I think the statement is very clear that this question of rate should not be gone into.

By Mr. Gordon: If the Commissioner will recall, the only purpose of that testimony was——

By Judge Reed: To justify the rate.

(Argument not reported.)

By Mr. Gordon: We desire today to file a petition, which we hope will be heard at the time the argument on these other questions are heard, in which we request the Commission to withdraw the order requiring us to furnish gas, and following their refusal to do that, that they will fix a temporary rate which the Peoples Company is entitled to collect, which we claim should not be less than 40 cents per thousand cubic feet, to be in effect until these questions are finally decided. I desire to file that petition today and give Mr. McCahill and Mr. Cunningham opportunity to answer it and be prepared to argue it when these other questions are argued.

By Judge Reed: You may file your petition and the same will be sent out for answer.

[fols. 743a-747a] By Mr. McCahill: I will state right now that we object in this proceeding to the Commission fixing a rate in any way except as provided by the public service company law. They can at any time file a rate that is effective on less than 30 days' notice and if the Commission sees fit they will let it become effective.

By Judge Reed: That is a matter you can take up before the entire Commission.

Testimony closed.

CERTIFICATE.

I hereby certify that the foregoing is a true and accurate transcript of the proceedings before the Public Service Commission of the Commonwealth of Pennsylvania in the within matter.

H. F. Jolly.

[fol. 748a] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Complaint Docket, No. 1098, 1916

LOUIS FRANKE

vs.

JOHNSTOWN FUEL SUPPLY COMPANY

PETITION OF LOUIS FRANKE FOR HIMSELF AS A CONSUMER AND AS MAYOR OF THE CITY OF JOHNSTOWN—Filed September 13, 1916

The petition of the above named complainant respectfully shows:

(a) That your Complainant is a resident of the City of Johnstown, Pennsylvania, and makes this complaint in behalf of himself as a Domestic Consumer of Natural Gas, supplied by the Johnstown Fuel Supply Company; and also in his capacity, as Mayor of the said City, on behalf of the residents and taxpayers therein, also consumers of the said Natural Gas; and his attorney is Tillman K. Saylor, whose address is Woolf Block, corner of Franklin and Lincoln streets, Johnstown, Pennsylvania.

(b) That the Johnstown Fuel Supply Company is a Public Service [fol. 749a] Corporation engaged in the business of furnishing natural gas to consumers in Johnstown and vicinity, with its plant and general office on Vinve street in the City of Johnstown, Pennsylvania.

(c) That the Johnstown Fuel Supply Company has filed with the Public Service Commission of the Commonwealth of Pennsylvania, Tariff P. S. C. No. 2, cancelling its Tariff P. S. C. No. 1; that Tariff P. S. C. No. 2 increases the rate for gas and service to both domestic and industrial consumers thereof, as follows, to-wit:

(1) To domestic consumers, as per Schedule A, P. S. C. No. 2, a readiness to serve charge of 50c. per customer per month has been added.

(2) To industrial consumers, as per Schedule B, P. S. C. No. 2, 15c. gross per 1,000 cubic feet of monthly consumption to 18c. gross per 1,000 cubic feet of monthly consumption.

(d) That an ordinance entitled, "An Ordinance Granting Unto the United Fuel Gas Company, a Corporation, Its Successors and Assigns, the Right to Lay, Operate and Maintain Lines of Pipe in the Streets and Highways of the City of Johnstown, Cambria County, State of Pennsylvania, for the Purpose of Supplying Natural Gas for Fuel and Lighting Purposes to the Public; and Providing the Terms and Conditions Under Which the Said Privileges Shall be Exercised," was passed by the Council of the City of Johnstown, on March 23, 1906, and approved by the Mayor of said City of Johnstown on March 26, 1906, a certified copy of which ordinance is

hereto attached and made a part hereof; and an acceptance of said Ordinance was subsequently filed by the United Fuel Gas Company, a certified copy of which acceptance is hereto attached and made a [fol. 750a] part hereof, and all the right and interest of said United Fuel Gas Company in said ordinance was later assigned to the said Johnstown Fuel Supply Company.

(e) That section 9 of said Ordinance provides as follows:

"The charge for natural gas, supplied as aforesaid by the United Fuel Gas Company, its successors and assigns, during the continuance of this franchise, shall not exceed thirty-five cents per thousand cubic feet; and the said United Fuel Gas Company, its successors and assigns, shall make no charge directly or indirectly to its consumers within the said City, for meters or for the installing of meters; and upon breach of any of which conditions this ordinance shall ipso facto become null and void and all the rights and privileges hereunder immediately cease and determine and the mains, pipes, connections, appliances and property generally of the said United Fuel Gas Company, its successors and assigns, in the streets, alleys and highways of the said City shall become the property of the said City or its successors."

(f) That under Section 9 of the above recited Ordinance, the Johnstown Fuel Supply Company is prevented from making a charge to domestic consumers in excess of 35c. per thousand cubic feet, and that the readiness to serve charge of 50c. per customer per month, embodied in P. S. C. Tariff No. 2, is, in effect, an increase in the price of natural gas to an amount in excess of the said maximum amount of 35c. per thousand cubic feet, and is therefore, in violation of the terms of said ordinance.

[fol. 751a] Wherefore your petitioner prays that the Respondent may be required to answer the charges herein, and that upon a final hearing therefore the Commission will make such order in the premises as may seem meet.

Dated City of Johnstown, Pennsylvania, the 7th day of September, 1916.

Louis Franke, For Himself as a Consumer and as Mayor of the City of Johnstown.

Jurat showing the foregoing was duly sworn to by L. Franke omitted in printing.

[fol. 752a] COUNCILS OF CITY OF JOHNSTOWN

Special Ordinance No. 703

Select Bill No. 677

An Ordinance granting unto the United Fuel Gas Company, a corporation, its successors and assigns, the right to lay, operate, and maintain lines of pipe in the streets and highways of the city of Johnstown, Cambria County, State of Pennsylvania, for the purpose of supplying natural gas for fuel and lighting purposes to the public and providing the terms and conditions under which the said privileges shall be exercised.

Section 1. Be it enacted and ordained by the Select and Common Councils of the City of Johnstown, and it is hereby enacted and ordained by the authority of the same:

That the right and privilege be and the same is hereby granted unto the United Fuel Gas Company, a corporation, its successors and assigns, to lay, operate, and maintain lines of pipe in the streets, alleys and highways of the City of Johnstown, for the purpose of supplying natural gas for fuel and lighting purposes to the public, for the term of thirty years beginning at the date of acceptance of this ordinance by the said company, and ending thirty years thereafter; upon the following conditions and restrictions.

Section 2. The said lines of pipe and connections thereto shall be laid, maintained, and changed under the direction of the City En-
[fol. 753a] gineer, and laid, maintained, changed and operated in conformity with the ordinances of the City of Johnstown, now in existence or that may hereafter be enacted; and so as not to conflict with the rights and privileges now or hereafter possessed by the said city and its successors, and to comply with any future change or changes in the grades of streets or highways or in the installment of sewers or other necessary changes caused by the future growth of the said City; and the laying, operating, repairing and changing of the said lines of pipe or parts thereof or connections thereto, now and hereafter, shall be done at the expense of the said company, without recourse to the said city.

Section 3. Sewers, either public or private, as well as all pipes, mains and conduits already laid in the streets, alleys and lanes of the City of Johnstown shall not in any manner be interfered with and all rights and privileges herein granted shall be subject to the rights and privileges heretofore granted for the use and enjoyment of said highways. None of the pipes, connections or appliances of the United Fuel Gas Company, its successors and assigns, shall be laid over any sewer or sewers now laid, excepting when necessary to cross the same; and should it subsequently be found necessary to change the location of pipes, connections, appliances, or any part thereof, for the purpose of laying a public sewer or sewers, such changes shall be made immediately by the said United Fuel Gas

Company, its successors and assigns, upon notice in writing by the City Engineer, at the expense of the said company as aforesaid.

Section 4. The United Fuel Gas Company, its successors and as- [Fol. 754a] signs, shall in all instances comply with the ordinances now in force or that may hereafter be enacted by the said City of Johnstown, or its successors, regulating and governing the opening and excavating or otherwise disturbing the highways of the said City, and shall from time to time file with the City Engineer a map of its pipe lines and extensions.

Section 5. The said United Fuel Gas Company, its successors and assigns, shall maintain and operate a system for supplying natural gas in the said City so as at all times and in all seasons to furnish and maintain a general gas pressure of not less than four nor more than twelve ounces per square inch of pressure at the point of consumption in and upon its whole system of supply pipes throughout the said City, as laid at any time, as shall be determined by accurate recording gauges set up and connected with the said company's supply system, at such points on said system as shall be designated by the City Engineer and approved by the Joint Highway Committee of the said City, said gauges to be under the supervision and exclusive control of said City Engineer; and gas so supplied shall be of a quality generating not less than nine hundred British thermal units per cubic foot as determined by standard calorimeter upon tests to be made by the City Engineer from time to time as the mayor of the said City shall direct and the records of pressure and tests of quality made and taken as aforesaid shall be filed in the office of the City Engineer and there remain; and upon failure of the said United Fuel Gas Company, its successors and assigns, to furnish and supply natural gas at the minimum pressure or of a minimum thermal quality, above specified during any day or five days, consecutive or [fol. 755a] otherwise, in any period of thirty days then and in such event and upon such failure and default being certified in writing by the City Engineer to the mayor of said City, and notice thereof given to the company, the said United Fuel Gas Company, its successors and assigns, shall pay a penalty in the nature of liquidated damages to the said City, the sum of One Hundred Dollars per day until the above specified minimum pressure or minimum thermal quality shall be restored.

Section 6. The mains and supply pipes of the said company, its successors and assigns, their connections, valves and appliances generally for distribution of natural gas within the said City shall be provided with suitable appliances so as to prevent or take up all leakage that may occur therein detrimental or dangerous to life, property or vegetation. It being expressly understood that the said City of Johnstown, or its successors, shall not be liable for any damages incurred by reason of any of the rights and privileges granted under this ordinance during the term for which the said ordinance is granted nor for any damages occasioned by the negligence of the said company, its successors and assigns, or its employes or agents, in

laying, operating, or maintaining its mains or supply pipes nor for the removal of the same as hereinafter provided; and the supervision of the City Engineer shall not release the said company, its successors or assigns, employees or agents, from the consequences of such negligence.

Section 7. All the main pipes before being put into service shall be carefully tested with an air pressure of fifty pounds to the square inch and shall be made air tight before being covered.

Section 8. The privileges herein granted are conditioned that the [fol. 756a] said United Fuel Gas Company, its successors and assigns, shall furnish natural gas ready for use within the City on or before October 7, 1907; and shall also furnish and supply natural gas to every part of the City and to any ten property owners, within 2,500 feet of the line or lines of the same, making application for the supply of the same at any place within the City limits, when such application shall have been approved by the Joint Highway Committee of Councils and the City Engineer; and upon failure of the said United Fuel Gas Company, its successors and assigns, to furnish and supply natural gas to every portion of the City, upon notice in writing of the approval of the said Joint Highway Committee and the City Engineer as aforesaid, then this ordinance shall ipso facto become null and void and all the rights and privileges thereunder shall immediately cease and determine.

Section 9. The charge for natural gas, supplied as aforesaid by the United Fuel Gas Company, its successors and assigns, during the continuance of this franchise, shall not exceed thirty-five cents per thousand cubic feet; and the said United Fuel Gas Company, its successors and assigns, shall make no charge directly or indirectly to its consumers within the said City, for meters or for the installing of meters; and upon breach of any of which conditions this ordinance shall ipso facto become null and void and all the rights and privileges thereunder immediately cease and determine and the mains, pipes, connections, appliances and property generally of the said United Fuel Gas Company, its successors and assigns, in the streets, alleys and highways of the said City shall become the property of the said City or its successors.

[fol. 757a] Section 10. Should the United Fuel Gas Company, its successors and assigns, for the entire term of this grant, comply with the provisions thereof and should there not be any extension of the within term, then at the time of such expiration three arbitrators shall be appointed, one by the city or its successors, one by the United Fuel Gas Company, its successors and assigns, and they two shall appoint a third, who shall make inventory and appraise and value the mains, pipes, connections, appliances and property of the said company, its successors and assigns, within the City limits, and having so inventoried, appraised and valued the same, the said City of Johnstown, and its successors, shall pay to the said United Fuel Gas Company, its successors and assigns, the amount of such valua-

tion, and shall thereupon acquire absolute title to the aforesaid property. Provided, the said City shall have the option within thirty days from the finding of said arbitrators to accept or refuse the property at the valuation as aforesaid. In the event of the refusal on the part of the said City or its successors to elect to accept the said option, then the said United Fuel Gas Company, its successors and assigns, shall give bond, with sufficient surety or sureties to the said City, or its successors, in the sum of twenty thousand dollars, lawful money of the United States, conditioned that the said United Fuel Gas Company, its successors and assigns, will remove the said mains, pipes and appliances within the term of one year from the date of the refusal in writing of the said City to accept the aforesaid option; and that it will restore the streets, alleys and highways of the said City to the condition they were in immediately before such removal, [fol. 758a] and upon failure so to do (of which failure the City Engineer and Joint Highway Committee shall be the sole judges) the said bond shall be forfeited to the said City, and should the said United Fuel Gas Company, its successors and assigns, upon the refusal of the said City to accept the within option, not give bond for the removal of its mains, pipes, connections and appliances as aforesaid, within three years from such refusal of the said City to accept the option, then the mains, pipes, connections, appliances, and property of the said United Fuel Gas Company, its successors and assigns, in the said City shall be forfeited to the said City absolutely.

Section 11. Concurrently with the written acceptance of this ordinance as hereinafter provided, the said United Fuel Gas Company, its successors and assigns, shall pay unto the City of Johnstown by a properly certified check, the sum of Ten Thousand Dollars, and it is further hereby provided that the said United Fuel Gas Company, its successors and assigns, shall pay to the said City of Johnstown, or its successors, the additional sum of One Thousand Dollars, lawful money, on the first day of May, 1907, and the sum of One Thousand Dollars, annually thereafter on the first day of May in each and every succeeding year during the continuance of this ordinance. And upon default of any of the said annual payments or part thereof for ninety days after the same shall be due, then this ordinance shall become null and void.

Section 12. This ordinance furthermore shall be null and void unless the United Fuel Gas Company, its successors and assigns, shall file with the City Clerk of the City of Johnstown within thirty days after approval thereof its written absolute acceptance thereof; [fol. 759a] said acceptance to be by the Board of Directors thereof at a meeting, legally called for such purpose; the action of said Board to be certificated by the secretary of said corporation under its corporate seal and accompanied by a certified check of Ten Thousand Dollars to the City of Johnstown.

Passed finally in Council March 23, 1906.
Approved March 26, 1906.

(Signed) Charles Young, Mayor.

I do hereby certify that the above and foregoing is a true copy of Special Ordinance of the City of Johnstown No. 706.

Attest:

Jno. W. Cramer, City Clerk. (Seal.)

Acceptance by the United Fuel Gas Company of an Ordinance of the City of Johnstown, Pennsylvania

The United Fuel Gas Company, a corporation duly organized under the laws of the State of West Virginia, and also duly registered in the office of the Secretary of the Commonwealth for the State of Pennsylvania, hereby accepts for itself, its successors and assigns, the provisions of special ordinance No. 706, granting unto the United Fuel Gas Company, its successors and assigns, the right to lay, operate [fol. 760a] and maintain lines of pipe in the streets and highways of the City of Johnstown, County of Cambria, State of Pennsylvania, for the purpose of supplying natural gas for fuel and lighting purposes to the public; and providing the terms and conditions under which the said privilege shall be exercised; passed by the Council of the City of Johnstown March 23rd, 1906, and approved by the Mayor of said City March 26th, 1906, and in consideration of the franchise, rights and privileges, granted by said ordinance to said company, its successors and assigns, to do and perform fully, faithfully and promptly each and all the things which said ordinance provides shall be done by said Company, its successors and assigns, and to comply faithfully with each and every provision of said ordinance.

In witness whereof, the said United Fuel Gas Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by Geo. W. Crawford, its President, and H. C. Reeser, its Secretary (thereunto duly authorized by resolution of its Board of Directors), this 23rd day of April, A. D. 1906.

The United Fuel Gas Company, by Geo. W. Crawford, President.

Attest: H. C. Reeser, Secretary.

Resolved, that the United Fuel Gas Company accepts for itself, its successors and assigns, the provisions of An Ordinance, No. 706, passed by the Council of the City of Johnstown, County of Cambria, [fol. 761a] State of Pennsylvania, and that the President and Secretary be, and they are hereby authorized and directed to execute and file with the Clerk of said City a written acceptance of said ordinance (in the name and under the corporate seal of the Company as follows):

Acceptance by the United Fuel Gas Company of an Ordinance Passed by the City of Johnstown, Pennsylvania

The United Fuel Gas Company, a corporation duly organized under the laws of the State of West Virginia, and also duly registered in the office of the Secretary of the Commonwealth for the State of

Pennsylvania, hereby accepts for itself, its successors and assigns, the provisions of an ordinance No. 706 granting unto the United Fuel Gas Company, its successors and assigns, the right to lay, operate and maintain lines of pipe in the streets and highways of the City of Johnstown, Cambria County, Pennsylvania, for the purpose of supplying natural gas for fuel and lighting purposes to the public, and providing the terms and conditions under which the said privilege shall be exercised; passed by the Council of the City of Johnstown March 23rd, and approved by the Mayor of said City March 26th, 1906, and in consideration of the franchise, rights and privileges granted by said ordinance to said company, its successors and assigns, to do and perform fully, faithfully and promptly, each and all things which said ordinance provides shall be done by said company, its suc-[fol. 762a] cessors and assigns, and to comply faithfully with each and every provision of said ordinance.

Be it further resolved, that the Secretary furnish the clerk of said City a copy of this resolution verified by affidavit.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

H. C. Reeser, being duly sworn, says that he is the duly elected, qualified and acting Secretary of the United Fuel Gas Company, a corporation duly organized under the laws of the State of West Virginia, and also duly registered in the office of the Secretary of the Commonwealth for the State of Pennsylvania, and that the above and foregoing is a true and correct copy of a resolution duly and regularly adopted by the Board of Directors of said Company at a special meeting duly and regularly called and held by the said Board on the 23rd day of April, A. D. 1906, as the same appears of record in the minutes made and kept by the affiant at the proceedings of said Board in Volume No. 1, page 46.

H. C. Reeser.

Subscribed and sworn before me this 23rd day of April, 1906. Waltter W. Rathbun, Notary Public in and for Allegheny County, Pennsylvania. My commission expires February 14th, 1910. (Seal.)

[fol. 763a] I do hereby certify that the above and foregoing is a true copy of an acceptance on file in the office of the City Clerk.

Attest:

Jno. W. Cramer, City Clerk, Johnstown, Pa. (Seal.)

Sept. 7, 1916.

I hereby accept service of within complaint.

Bruce H. Campbell, Attorney for Johnstown Fuel Supply Company.

BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

ANSWER OF JOHNSTOWN FUEL SUPPLY COMPANY—Filed September 25, 1916

The Answer of the Johnstown Fuel Supply Company respectfully represents:

(1) The averments contained in paragraphs a, b, c, d and e of above complaint are admitted.

(2) It is admitted that the terms of Sec. 9 of the ordinance referred to in paragraph (d) of the above complaint would prevent your Respondent from increasing its rates for natural gas beyond 35c per M cubic feet if such contract is a valid contract and can be enforced—but your Respondent claims that the said Sec. 9 of said ordinance does not embrace nor prohibit a charge for "readiness to [fol. 764a] serve" such as embodied in Respondent's Tariff P. S. C. Pa. No. 2, and, if it does so prohibit, it is in restraint of the police power of the Commonwealth and would nullify the power conferred upon the Public Service Commission of the Commonwealth of Pennsylvania in respect to the regulation of rates; and further under the legislative regulation of said rates made by the Act of Assembly the obligation of Sec. 9 of said ordinance does not extend to prevent the Respondent from charging such rates as are just and reasonable, even though they be higher than those which are stipulated in said ordinance.

(3) That your Respondent purchases natural gas from the Peoples Natural Gas Company, a Pennsylvania Public Service Corporation under a contract being dated the 12th day of August, 1909, which contract, inter alia, provides for a payment to the said Peoples Natural Gas Company of 70% of its gross actual receipts from the sale of all natural gas for domestic consumption and 75% of its gross receipts for the sale of natural gas under special contracts approved by the said Peoples Natural Gas Company, and that the gross income from all operations of your Respondent at the rates heretofore in effect did not net your Respondent more than 3% per annum on the fair value of its investment; and further that the increased revenue under the terms of Tariff P. S. C. Pa. No. 2 will not produce [fol. 765a] more than a just return based upon a fair value of respondent's property.

(4) Respondent therefore avers that the addition of a "Readiness to serve" charge of 50c per month is not unlawful, is just and reasonable and in accordance with its schedules, properly and legally on file with your Honorable Commission.

Respectfully submitted, Johnstown Fuel Supply Co., by P. J. Morrissey, General Manager.

Attest: W. A. Reiber, Secretary. (Seal.)

Jurat showing the foregoing was duly sworn to by P. J. Morrissey omitted in printing.

[fol. 766a] September 18, 1916.

I hereby acknowledge receipt of service of copy of above answer.
(Signed) Louis Franke, Mayor.

BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

DEMURRER AND ANSWER OF THE PEOPLES NATURAL GAS CO.—Filed October 3, 1916

The Peoples Natural Gas Company, hereinafter called "The Peoples Company," on summons by your Commission to satisfy the complaint in the above case or make answer, respectfully claims:

First. That the complaint and answer filed by defendant do not show a breach of legal duty on the part of The Peoples Company.

Second. That The Peoples Company should not be involved in the controversy. It is not in the business of supplying gas to the public in Johnstown. Its rights and duties so far as complainant is concerned are fixed by contract between defendant and The Peoples Company, and the contract is not subject to be impaired by the order of your Commission.

Without waiving the above claims, which are in the nature of a demurrer to the complaint, but at all times relying upon its demurrer and the insufficiencies of the complaint, nevertheless for answer The Peoples Company says:

1. The principal office of The Peoples Natural Gas Company is [fol. 767a] at No. 424 Sixth Avenue, Pittsburgh, Pa., and its attorneys are Gordon and Smith, No. 1551 Frick Annex Building, Pittsburgh, Pa., and Christy Payne, 424 Sixth Avenue, Pittsburgh, Pa.

2. The averments contained in paragraphs (a) and (b) of the complaint are admitted.

3. The Peoples Company has no information about the averments contained in paragraph (c) of the complaint, excepting as informed by the papers served upon it in this case. Defendant has not consulted The Peoples Company or given it information concerning the defendant's rates and charges in Johnstown or any proposed changes therein.

4. The averments contained in paragraphs (d) and (e) of the complaint are presumed to be true; The Peoples Company has no information concerning the same excepting from the complaint and answer.

5. The Peoples Company has no information to enable it to deny or to admit the averments contained in paragraph (f) of the com-

plaint, excepting insofar as they are admitted by defendant's answer It is averred that a readiness to serve charge is not a violation of the ordinance.

6. Defendant purchases its supply of natural gas from The Peoples Company under a contract between the two companies dated August 12, 1909, superseding a prior contract which was entered into prior to the construction of defendant's natural gas plant in Johnstown and in contemplation of such work. Under the terms of said contract The Peoples Company sells and delivers said gas to defendant at a point near the city limits of Johnstown, where the defendant receives and takes said gas. The contract provides that the defendant [fol. 768a] will pay The Peoples Company for said gas an amount equal to 70% of its gross actual receipts from the sale of natural gas to consumers paying domestic rates, and a sum equal to 75% of the actual gross receipts from the sale of natural gas at special rates for manufacturing purposes, if there should be any surplus available for such delivery and the prices and terms satisfactory to The Peoples Company; the contract rate for gas sold for manufacturing purposes was subsequently made 12c per thousand cubic feet to The Peoples Company to 1913 and 13c up to August 15, 1916, and thereafter 15c (as measured by the consumers' meters), the defendant company being left free to make its own rate above that price to reimburse it for distribution of the gas to the consumer. It is further provided in said contract of August 12, 1909, that defendant shall not fix a price to domestic consumers at any time during the continuance of the contract after December 31, 1911, which shall net to The Peoples Company less than 24½c per thousand cubic feet for gas sold for domestic consumption; but no demand was made upon defendant under this provision until 1913, effective October 1, 1913.

7. The Peoples Company is informed that Johnstown is what is known as a very poor natural gas town, that is to say, that on account of the abundance, quality and cheapness of coal, the average amount of gas used by the domestic consumer is very low. Many consumers use the gas only for lighting purposes; the return from such consumers, taking into account the fact that natural gas is of much greater efficiency than artificial gas and is sold at a much lower rate, is wholly inadequate for the service. In addition to this fact, the community is an industrial one and excepting until recent months [fol. 769a] the prosperity of the community has been at low tide during the entire period since the introduction of natural gas.

8. It does not appear that the complaint contains charges against the increase of the defendant's rate for gas sold for manufacturing purposes. The Peoples Company avers that natural gas for manufacturing purposes under the contract between defendant and The Peoples Company, and the line of business followed by both companies, is not public service. The position of The Peoples Company on that subject will be set forth in its intervening answer to the complaint of the Cambria Steel Company, at Complaint Docket No. 1083.

9. The Peoples Company notified defendant in the year 1913 that on and after October 1, 1913, it would demand payment at the rate

of 24½c per thousand cubic feet for gas sold for domestic consumption; this increase is still in dispute between The Peoples Company and defendant. Excepting for the change last noted, there has been no change of rate to defendant company since 1913 for gas sold for domestic consumption. The Peoples Company has had no part in the consideration or preparation of the tariffs and the changes in tariffs adopted and published by the defendant. If the changes proposed by defendant company result in increased receipts, The Peoples Company would participate in the advantage if accounting is made by defendant on the basis of 70% of receipts, but if defendant accounts to The Peoples Company on the basis of 24½c per thousand cubic feet, which is claimed to be the contract rate by The Peoples Company, it is estimated that the increase over the receipts to be en- [fol. 770a] joyed by the defendant company will not be so great as to affect the 24½c rate and give The Peoples Company any benefit.

10. The proposed rates and charges for gas in Johnstown are not excessive, but are reasonable under the conditions existing in said city.

The Peoples Natural Gas Company, having answered the complaint, respectfully urges that your Commission find that it is not a necessary party to the proceeding and that the complaint as to it should be dismissed.

The Peoples Natural Gas Company. John G. Pew, Vice President. (Seal.)

Jurat showing the foregoing was duly sworn to by John G. Pew. Omitted in printing.

[fol. 771a] BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

AMENDMENT TO DEMURRER AND ANSWER OF PEOPLES NATURAL GAS COMPANY, INTERVENER—Filed September 20, 1917

And now, to-wit, September 14, 1917, comes the Peoples Natural Gas Company, an intervening defendant in this case, and files its amendment to the demurrer and answer heretofore filed by it in this proceeding, to-wit:

1st. That the Public Service Commission of Pennsylvania is without jurisdiction to make any order affecting the Peoples Natural Gas Company for the reason that the relationship between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company does not constitute a public service and is not within the jurisdiction of the Commission as conferred by the laws of the State of Pennsylvania.

2nd. That the gas contracted to be supplied by the Peoples Natural Gas Company to Johnstown Fuel Supply Company is gas produced in the State of West Virginia and transported into and delivered to

the Johnstown Fuel Supply Company in the State of Pennsylvania, although a relatively small proportion of Pennsylvania gas is delivered in order to furnish an adequate supply, and the transportation, sale and delivery of the gas so contracted for constitutes interstate and not intrastate commerce, and the contract relating thereto, which is in existence between the two companies, is a contract relating to interstate commerce and this Commission is without jurisdiction to make any orders with reference thereto and any order that [fol. 772a] might be made by the Commision regulating, interfering with or impairing said contract in any degree would constitute an interference with and undue burden upon interstate commerce.

3rd. The natural gas referred to in the preceding paragraph as transported from the State of West Virginia is not produced by the Peoples Natural Gas Company but is produced by a West Virginia corporation and is purchased by the Peoples Natural Gas Company from said West Virginia corporation under the terms of a contract. The said West Virginia corporation is beyond the jurisdiction of our Commission and it is beyond the power of your Commission to make any order affecting or regulating the price at which the West Virginia corporation sells its gas. The gas so produced by the West Virginia Corporation passes through its pipes in West Virginia and through the pipes of the Peoples Natural Gas Company in Pennsylvania in a continuous flow and is delivered by the Peoples Natural Gas Company to the Johnstown Company's main and by it, after the pressure has been reduced and regulated, distributed through its system of distribution pipes and services to its customers.

Peoples Natural Gas Company, by Christy Payne, Gordon & Smith, Its Attorneys.

[fol. 773a] Jurat showing the foregoing was duly sworn to by John G. Pew omitted in printing.

And now, to-wit: September —, 1917, the foregoing amendment to the demurrer and answer of the Peoples Natural Gas Company is presented and the same is allowed and ordered to be filed.

[fol. 774a] BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

SUPPLEMENTAL COMPLAINT—Filed September 24, 1917

And now, to-wit, September 19, A. D. 1917, comes Louis Franke, complainant against Johnstown Fuel Supply Company at Complaint Docket No. 1098-1916, of the Public Service Commission of the Commonwealth of Pennsylvania, and, as a domestic consumer of natural gas in the City of Johnstown and as Mayor of said City, files, on behalf of himself and on behalf of the domestic consumers of natural gas residing in said City, this supplemental complaint against said Johnstown Fuel Supply Company and The Peoples Natural Gas Company.

I. Complainant avers, in addition to the averments contained in his original complaint filed September 8, 1916, that the rates and charges established for and demanded of domestic consumers of natural gas by said Johnstown Fuel Supply Company under its Tariff P. S. C. No. 2 are not only violative of the ordinance referred to in said original complaint, but are also in and of themselves excessive, unjust and unreasonable.

II. That The Peoples Natural Gas Company is a public service company of the Commonwealth of Pennsylvania, having its principal office in the City of Pittsburgh, Pennsylvania, incorporated under the laws of said State for the purpose of producing, dealing in, transporting, storing and supplying natural gas to such persons, corporations or associations within convenient connecting distance of its line of pipe as may desire to use the same, and for a number of years last past has been engaged in the transportation and supplying of [fol. 775a] natural gas for public consumption in various places in the western part of the State of Pennsylvania, and has exercised its right of eminent domain under the laws of the State of Pennsylvania for the purpose, inter alia, of the laying of pipe lines for the transportation and distribution of natural gas to the City of Johnstown, Cambria County, Pennsylvania.

III. That the said Johnstown Fuel Supply Company and the said The Peoples Natural Gas Company jointly supply natural gas for public consumption in the said City of Johnstown under an arrangement between said companies, reduced to writing, by the terms of which the said The Peoples Natural Gas Company transports the natural gas to the City of Johnstown and the said Johnstown Fuel Supply Company distributes the natural gas to domestic and industrial consumers.

IV. The rates to be charged and collected from domestic consumers of natural gas in the City of Johnstown are dictated and controlled by the said The Peoples Natural Gas Company under a provision in said agreement between said Johnstown Fuel Supply Company and the said The Peoples Natural Gas Company, which provides substantially as follows:

"The price at which natural gas is now sold to domestic consumers is thirty (30) cents net per thousand (1,000) cubic feet; The Peoples Natural Gas Company consents that this price may be increased to not more than thirty-five (35) cents per thousand (1,000) cubic feet on and after December 31, 1911, but the price shall not be increased beyond this rate without The Peoples Natural Gas Com- [fol. 776a] pany's written consent nor shall the Johnstown Fuel Supply Company fix a price to domestic consumers at any time during the continuance of this contract after December 31, 1911, which shall net to The Peoples Natural Gas Company less than twenty-four and one-half (24½) cents per thousand (1,000) cubic feet for gas sold for domestic consumption."

V. It is further provided in said arrangement between said companies that the Johnstown Fuel Supply Company shall keep proper books, upon which shall be kept a true record of all sales of all kinds of gas as registered by the Johnstown Fuel Supply Company's meters and of all moneys realized therefrom and that the Johnstown Fuel Supply Company will pay monthly to The Peoples Natural Gas Company, until January 12, 1912, "an amount equal to seventy (70) per cent. of its gross actual receipts from the sales of natural gas to consumers paying domestic rates" and from January, 1912, to August, 1939, will pay an amount equal to seventy-five (75) per cent. of said gross receipts provided, however, that so long as the Johnstown Fuel Supply Company "is fully supplying all the resuirements of seven thousand five hundred (7,500) consumers with natural gas for light, heat or fuel the Johnstown Fuel Supply Company shall be obligated to pay to The Peoples Natural Gas Company only seventy (70) per cent. of its gross receipts from the sale of natural gas to consumers paying domestic rates."

VI. As a result of said agreement between said companies for the divsion of the moneys collected from the domestic consumers of natural gas in the City of Johnstown, the said The Peoples Natural [fol. 777a] Gas Company has been receiving from the said Johnstown Fuel Supply Company twenty-one (21) cents for each one thousand (1,000) cubic feet of natural gas used by domestic consumers, but since the latter part of 1913 has been demanding at its share of the proceeds of the sale of gas twenty-four and one-half (24½) cents for each thousand (1,000) cubic feet of domestic consumption in said City of Johnstown.

VII. That the rates and charges demanded, exacted, charged and collected by the said The Peoples Natural Gas Company from domestic consumers of natural gas in the City of Johnstown through the said Johnstown Fuel Supply Company, to wit, twenty-one (21) cents collected and twenty-four and one-half (24½) cents demanded per each thousand (1,000) cubic feet of domestic consumption are excessive, unjust and unreasonable, and unjustly discriminatory.

VIII. That although the said The Peoples Natural Gas Company is a public service company doing business within this State and has been engaged in a public service business for a number of years last past, and has jointly with the said Johnstown Fuel Supply Company been rendering and furnishing to domestic and industrial consumers in the said City of Johnstown, service of the kind or character which it was incorporated to render or furnish, to wit, the transporting and supplying of natural gas for public consumption; yet the said The Peoples Natural Gas Company in violation of Subsection D of Section 1 of Article II and in violation of Section 7 of Article III of the Public Service Company Law and in violation of General Order No. 8 of your Honorable Commission has neglected and refused to file with your Honorable Commission [fol. 778a] and post as required by the Public Service Company

Law, its tariffs and schedules showing the prices, charges, rates or other compensation asked, demanded or received for the service rendered or furnished by it at or in the said City of Johnstown.

Wherefore, complainant prays that your Honorable Commission shall after hearing determine that the rates and charges, established, demanded or collected by the said Johnstown Fuel Supply Company and the said The Peoples Natural Gas Company for the service rendered or furnished by them or either of them at or in the City of Johnstown are unjust and unreasonable and unjustly discriminatory and that the said The Peoples Natural Gas Company has violated the Public Service Company Law in that it has been rendering and furnishing service at and in the City of Johnstown, without having filed and posted its tariffs and schedules for such service; and that your Honorable Commission shall determine and prescribe by a specific order the maximum, just, due, equal and reasonable rates and charges to be hereafter established, demanded, charged or collected by the said Johnstown Fuel Supply Company and the said The Peoples Natural Gas Company jointly or severally for the transporting and supplying of natural gas to domestic consumers in said City of Johnstown.

And he will ever pray, etc.

Louis Franke, Mayor of the City of Johnstown.

[fol. 779a] Jurat showing the foregoing was duly sworn to by Louis Franke omitted in printing.

BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

SUPPLEMENTAL ANSWER OF JOHNSTOWN FUEL SUPPLY COMPANY—Filed September 28, 1917

And now, to wit: September 24, 1917, comes Johnstown Fuel Supply Company, by its duly authorized officers, and files this supplemental answer to the supplemental complaint heretofore filed against said Johnstown Fuel Supply Company and The Peoples Natural Gas Company under date of September 19, 1917, at Complaint Docket No. 1098—1916, of the Public Service Commission of the Commonwealth of Pennsylvania, and in addition to the statements contained in the original answer of the Johnstown Fuel Supply Company heretofore filed in the above entitled matter, the Johns-[fol. 780a] town Fuel Supply Company respectfully states that:

1. Johnstown Fuel Supply Company denies that the rates and charges established for and demanded of domestic consumers of natural gas by said Johnstown Fuel Supply Company under its Tariff P. S. C. Pa. No. 2 are in violation of the ordinance of the said City of Johnstown, referred to in the original complaint filed herein on behalf of the City of Johnstown, and further denies that said rates are of themselves, or in any manner, excessive, unjust and unreasonable.

2. With reference to the statements contained in paragraph 2 of the supplemental complaint, the Johnstown Fuel Supply Company respectfully states that it has no knowledge of whether or not the statements therein contained are true, and that the information necessary to determine whether said statements are true is not within the possession of said Johnstown Fuel Supply Company, and for that reason the said Johnstown Fuel Supply Company makes no answer thereto.

3. With reference to the statements contained in paragraph 3 of said supplemental complaint, the Johnstown Fuel Supply Company denies that the Johnstown Fuel Supply Company and The Peoples Natural Gas Company jointly supply natural gas for public consumption in the City of Johnstown, and in that particular Johnstown Fuel Supply Company respectfully states that The Peoples Natural Gas Company sells to the Johnstown Fuel Supply Company, and delivers at the city line, the natural gas consumed by the citizens of the City of Johnstown, and the Johnstown Fuel Supply Company distributes said gas to said citizens for said domestic supply. The Johnstown Fuel Supply Company admits that said [fol. 781a] arrangement is reduced to writing as set forth in said paragraph 3 of said supplemental complaint.

4. With reference to the statements contained in paragraph 4 of said supplemental complaint, the Johnstown Fuel Supply Company denies that the rates to be charged and collected from domestic consumers of natural gas in the City of Johnstown are dictated and controlled by the Peoples Natural Gas Company, except as said Johnstown Fuel Supply Company has heretofore abided by the terms and provisions of the said contract referred to in said paragraph 4.

5. The Johnstown Fuel Supply Company admits the truth of the statements contained in paragraph 5 of said supplemental complaint.

6. The Johnstown Fuel Supply Company admits the truth of the statements contained in paragraph 6 of said supplemental complaint.

7. With reference to the statements contained in paragraph 7 of said supplemental complaint, the Johnstown Fuel Supply Company respectfully states that said Johnstown Fuel Supply Company has been paying to said Peoples Natural Gas Company 21 cents per 1,000 cubic feet of natural gas for domestic consumption, and that said amount is the amount provided to be paid under the terms of the contract existing between said companies and referred to in paragraph 4 of said supplemental complaint; that at the time the said contract was made and at the present time the said Johnstown Fuel Supply Company has no other source of supply from which to secure natural gas for distribution to the citizens of the City of Johnstown; that said Johnstown Fuel Supply Company has [fol. 782a] no means of knowing whether or not said 21 cents per 1,000 cubic feet of gas for domestic consumption, which said Johnstown Fuel Supply Company has been paying to said Peoples Natural

Gas Company, is excessive, unjust and unreasonable, or unjustly discriminatory; that said amount has heretofore been paid, and is being paid at the present time, because of the contract existing between said Peoples Natural Gas Company and said Johnstown Fuel Supply Company providing for said payment in said manner; that said Johnstown Fuel Supply Company has no means of knowing what it costs The Peoples Natural Gas Company to furnish said gas as provided for in said contract, and, basing its denial upon said ground, said Johnstown Fuel Supply Company denies that the said rate of 21 cents per 1,000 cubic feet of gas for domestic consumption is excessive, unjust and unreasonable, or unjustly discriminatory.

8. Johnstown Fuel Supply Company has no knowledge as to whether or not the statements contained in paragraph 8 of said supplemental complaint are true, and for that reason makes no answer thereto.

Wherefore, The Johnstown Fuel Supply Company prays that said complaint and said supplemental complaint be dismissed.

And it will ever pray, etc.

Johnstown Fuel Supply Company, by P. J. Morrissey, General Manager.

[fol. 783a] Jurat showing the foregoing was duly sworn to by P. J. Morrissey; omitted in printing.

BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

ANSWER AND DEMURRER OF THE PEOPLES NATURAL GAS COMPANY—Filed October 4, 1917

And now, to wit, September 29, 1917, comes The Peoples Natural Gas Company, one of the above named respondents, and files the following demurrer and answer to the supplemental complaint filed on the 20th day of September, 1917, by the complainant herein and in addition to the statements set out in the original demurrer and answer and its amendment filed by The Peoples Natural Gas Company in the above entitled proceeding respectfully avers as follows:

[fol. 784a] Demurrer

1st. That the Public Service Commission of Pennsylvania is without jurisdiction to make any order affecting The Peoples Natural Gas Company for the reason that the relationship between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company does not constitute a public service and is not within the jurisdiction of the Commission as conferred by the laws of the State of Pennsylvania.

2nd. That the gas contracted to be supplied by The Peoples Natural Gas Company to Johnstown Fuel Supply Company is gas produced in the State of West Virginia and transported into and delivered to the Johnstown Fuel Supply Company in the State of Pennsylvania, although a relatively small proportion of Pennsylvania gas is delivered in order to furnish an adequate supply, and the transportation, sale and delivery of the gas so contracted for constitutes interstate and not intrastate commerce, and the contract relating thereto, which is in existence between the two companies, is a contract relating to interstate commerce and this Commission is without jurisdiction to make any orders with reference thereto and any order that might be made by the Commission regulating, interfering with or impairing said contract in any degree would constitute an interference with and undue burden upon interstate commerce.

3rd. The natural gas referred to in the preceding paragraph as transported from the State of West Virginia is not produced by The Peoples Natural Gas Company but is produced by a West Virginia [fol. 785a] corporation and is purchased by The Peoples Natural Gas Company from said West Virginia corporation under the terms of a contract. The said West Virginia corporation is beyond the jurisdiction of your Commission, and it is beyond the power of your Commission to make any order affecting or regulating the price at which the West Virginia corporation sells its gas. The gas so produced by the West Virginia corporation passes through its pipes in West Virginia and through the pipes of The Peoples Natural Gas Company in Pennsylvania in a continuous flow and is delivered by The Peoples Natural Gas Company to the Johnstown Company's main and by it, after the pressure has been reduced and regulated, distributed through its system of distribution pipes and services to its customers.

4th. Whether or not the breaking up of the main current of said gas into distributing pipes by the Johnstown Fuel Supply Company for domestic sale and delivery at low pressure to consumers in Johnstown, continues to be interstate traffic or intrastate business, the Commission is without jurisdiction of the contract between The Peoples Natural Gas Company and the Johnstown Fuel Supply Company.

Answer

1. It is denied that the rates and charges established for and demanded of domestic consumers of natural gas by the Johnstown Fuel Supply Company under tariff P. S. C. No. 2 in so far as the same relates to the rate of 30c. per 1,000 cubic feet of monthly consump- [fol. 786a] tion, is in any manner excessive, unjust or unreasonable. The Peoples Natural Gas Company has no knowledge as to whether or not said rates and charges are in violation of the ordinance of the City of Johnstown referred to in the first paragraph of the supplemental complaint and has no knowledge as to whether said rates and charges in so far as same refer to the 50c. per month readiness to

serve charge is excessive, unjust or unreasonable and for that reason denies the averments with respect thereto contained in the first paragraph of the supplemental complaint.

2. In answer to the averments contained in the second paragraph of the supplemental complaint, it is averred that The Peoples Natural Gas Company exercised its right of eminent domain under the laws of the State of Pennsylvania for the purpose of the fulfillment of its contract with said Johnstown Fuel Supply Company, dated August 12, 1909, as well as to furnish natural gas to persons entitled to same located along the line of its right of way, but it is denied that The Peoples Natural Gas Company transports and distributes natural gas to the City of Johnstown or that it exercised the right of eminent domain as aforesaid for the purpose of transporting or distributing gas to the City of Johnstown. The truth of the other averments contained in the second paragraph of said supplemental complaint is admitted.

3. It is denied that natural gas for public consumption in the City of Johnstown is supplied jointly by the Johnstown Fuel Supply Company and The Peoples Natural Gas Company and it is averred that under the terms of said contract between the two companies, dated August 12, 1909, The Peoples Natural Gas Company transports [fol. 787a] natural gas to a point outside the city limits of Johnstown and there sells and delivers same to the Johnstown Fuel Supply Company. The pressure of the gas transported by The Peoples Natural Gas Company is reduced at this same point outside the city limits and the gas then distributed under a reduced pressure by the Johnstown Fuel Supply Company to the domestic and industrial consumers in the City of Johnstown and it is denied that the Peoples Natural Gas Company has any control over said gas after the same is delivered to the Johnstown Fuel Supply Company or has any dealings or relations with either the domestic or industrial consumers of the City of Johnstown in respect to either the sale or delivery of the said gas.

4. While it is admitted that the provision of the contract set forth in paragraph fourth of the supplemental complaint is correct, reference is made to the contract itself (Exhibit J-3 in this case) as correctly setting forth the terms thereof. It is denied that the rates charged and collected from domestic consumers of natural gas in the City of Johnstown are in any manner controlled or dictated by The Peoples Natural Gas Company under any provisions of said contract or otherwise.

5. In answer to the fifth paragraph of said supplemental complaint, The Peoples Natural Gas Company refers to its contract with the Johnstown Fuel Supply Company, dated August 12, 1909, no further answer to said paragraph being required.

6. It is admitted that the Johnstown Fuel Supply Company has in the past made payments to The Peoples Natural Gas Company at the rate of 21c. for each 1,000 cubic feet of natural gas used by

[fol. 788a] domestic consumers, which payments were accepted by The Peoples Natural Gas Company on account but not in full of the contract price with the full knowledge and consent of the Johnstown Fuel Supply Company. It is admitted, in so far as the admission is material to this controversy, that since October 1st, 1913, The Peoples Natural Gas Company has been demanding that the price due it for gas sold to the Johnstown Fuel Supply Company under the terms of the aforesaid contract is 24½¢ for each 1,000 cubic feet of natural gas used by domestic consumers.

7. It is denied that The Peoples Natural Gas Company delivers any natural gas to domestic consumers in the City of Johnstown and that it has any relations whatsoever with such consumers. It is further denied that the prices paid to or demanded by The Peoples Natural Gas Company for gas sold by it to Johnstown Fuel Supply Company under the contract between said two companies are excessive, unjust and unreasonable or unjustly discriminatory, and this respondent avers that the terms and prices contained in the said contract are fair, equitable and reasonable.

8. It is denied that the Peoples Natural Gas Company has been engaged jointly with the Johnstown Fuel Supply Company in rendering and furnishing gas to domestic and industrial consumers in the said City of Johnstown and reference is made to paragraph three of the answer herein as correctly setting forth the arrangement existing between said companies. It is admitted that The Peoples Natural Gas Company has not filed with The Public Service Commission of Pennsylvania or posted any tariffs or schedules showing the prices, charges, rates or other compensation asked, demanded [fol. 789a] or received for the service rendered or furnished by it at or in the said City of Johnstown and it is averred that The Peoples Natural Gas Company is not required by sub-section D of Section 1 of Article 2 or Section 7 of Article 3 of the Public Survey Company Law or by general order No. 8 of the Public Service Commission of Pennsylvania or any other law or order to file such tariffs or schedules, and for further answer to paragraph eighth of the supplemental complaint, reference is made to the averments contained in the demurrer constituting a part of this answer as correctly setting forth the reasons why said tariffs and schedules are not required to be filed or posted. It is further averred that The Peoples Natural Gas Company in the tariffs heretofore filed by it with the Public Service Commission of Pennsylvania does not hold itself out to be engaged in a public service so far as its dealings and contractual relations with the Johnstown Fuel Supply Company or the domestic or industrial consumers of the City of Johnstown are concerned or to offer service generally to other public service companies engaging in the natural gas business or other distributers of natural gas.

Wherefore, The Peoples Natural Gas Company prays that the said supplemental complaint together with the original complaint heretofore filed be dismissed.

And it will ever pray, etc.

The Peoples Natural Gas Company, by John G. Pew, President.

[fol. 790a] Jurat showing the foregoing was duly sworn to by John G. Pew omitted in printing.

[fol. 791a] THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

ORDER THAT PEOPLES NATURAL GAS CO. FILE, POST AND PUBLISH TARIFF AND SCHEDULES OF RATES—Filed December 17, 1917

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and demurrer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things having been had, and the Commission having found that the service which The Peoples Natural Gas Company is engaged in is a public service, and that The Peoples Natural Gas Company is a public service company within the meaning of The Public Service Company Law.

Now, to wit, December 4th, 1917, it is ordered: That the demurrer of The Peoples Natural Gas Company, be and the same hereby is overruled.

It is further ordered: That the Peoples Natural Gas Company file, post and publish according to law, its tariff and schedule of [fol. 792a] rates covering the service complained of in this complaint within fifteen days after the service of this order.

And it is further ordered: That the application of the Johnstown Fuel Supply Company requesting permission to put into effect its schedule of increased rates in advance of the final finding and determination of the Commission, be and the same hereby is denied.

By the Commission:

Wm. D. B. Ainey, Chairman.

Attest: A. B. Millar, Secretary. (Seal.)

This 7th day of December, 1917, the undersigned hereby acknowledges receipt of copy of the order rendered by the Commission in re Complaint Docket No. 1098 under date of December 4, 1917, and accepts service thereof on behalf of complainant.

J. E. B. Cunningham.

This 8th day of September, 1917, the undersigned hereby acknowledges receipt of copy of the order rendered by the Commission in re Complaint Docket No. 1098 under date of December 4, 1917, and accepts service thereof on behalf of respondent.

Christy Payne.

This 7th day of December, 1917, the undersigned hereby acknowledges receipt of copy of the order rendered by the Commission in re Complaint Docket No. 1098 under date of December 4, 1917, and accepts service thereof on behalf of respondent.

C. B. Miller.

[fol. 793a] In Superior Court of Pennsylvania

No. 111, April Term, 1918

Complaint No. 1098

Louis Franke

vs.

Johnstown Fuel Supply Company and Peoples Natural Gas Company, Appellant

Appeal of the Peoples Natural Gas Company from the Order of the Public Service Commission of the Commonwealth of Pennsylvania Overruling its Demurrer and Ordering it to File, Post and Publish its Tariff and Schedules of Rates Covering the Service Complained of—Filed December 21, 1917

The petition of Peoples Natural Gas Company respectfully represents:

That the above named complainant filed his complaint and supplemental complaint against the Johnstown Fuel Supply Company before The Public Service Commission of the Commonwealth of Pennsylvania, copies of which complaint and supplemental complaint accompany this petition.

That at the request of said Commission your petitioner intervened as respondent in said proceeding and filed its demurrer to said com-[fol. 794a] plaint and supplemental complaint, a copy of which demurrer accompanies this petition.

Your petitioner's demurrer was heard and passed upon by the Commission and an order filed by the Commission, dated the 4th day of December, 1917, wherein said demurrer was overruled and the Company ordered to file, post and publish its tariff and schedule of rates covering the service complained of. A copy of said order which was served by the Commission upon petitioner on the 8th day of December, 1917, accompanies this petition, and petitioner now desires to appeal from said order.

Now, therefore, This 21st day of December, 1917, Peoples Natural Gas Company, the petitioner herein, appellant, presents this petition, and appeals from the said order of the Commission, and assigns error thereto as follows:

Assignments of Error

1. The Commission erred in making the following finding:

"* * * The service which the Peoples Natural Gas Company is engaged in is a public service, and that the Peoples Natural Gas Company is a public service company within the meaning of the public Service Company Law."

2. The Commission erred in entering the following order:

"This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and demurrer on [fol. 795a] file, and having been duly heard and submitted by the parties and full investigation of the matters and things having been had, and the Commission having found that the service which the Peoples Natural Gas Company is engaged in is a public service, and that the Peoples Natural Gas Company is a public service company within the meaning of The Public Service Company Law.

Now, to wit, December 4th, 1917,

It is ordered, that the demurrer of the Peoples Natural Gas Company, be and the same hereby is overruled.

It is further ordered, that the Peoples Natural Gas Company file, post and publish according to law, its tariff and schedule of rates covering the service complained of in this complaint within fifteen days after the service of this order.

And it is further ordered, that the application of the Johnstown Fuel Supply Company requesting permission to put into effect its schedule of increased rates in advance of the final finding and determination of the Commission, be and the same hereby is denied.

By the Commission."

(The particular part of said order to which this assignment is directed is as follows:)

"Now, to wit, December 4th, 1917,

It is ordered, that the demurrer of the Peoples Natural Gas Company, be and the same hereby is overruled."

[fol. 796a] 3. The Commission erred in entering the following order:

"This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and demurrer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things having been had, and the Commission having found that the service which the Peoples Natural Gas Company is engaged in is a public service, and that the Peoples Natural Gas Company is a public service company within the meaning of The Public Service Company Law.

Now, to wit, December 4th, 1917,

It is ordered, that the demurrer of the Peoples Natural Gas Company, be and the same hereby is overruled.

It is further ordered, that the Peoples Natural Gas Company file, post and publish according to law, its tariff and schedule of rates covering the service complained of in this complaint within fifteen days after the service of this order.

And it is further ordered, that the application of the Johnstown Fuel Supply Company requesting permission to put into effect its schedule of increased rates in advance of the final finding and determination of the Commission, be and the same hereby is denied.

By the Commission."

(The particular part of said order to which this assignment is directed is as follows:)

[fols. 797a-807a] "It is further ordered, that the Peoples Natural Gas Company file, post and publish according to law, its tariff and schedule of rates covering the service complained of in this complaint within fifteen days after the service of this order."

4. The Commission erred in not dismissing the complaint as to the Peoples Natural Gas Company.

Wherefore, Your petitioner prays your Honorable Court to take such action and to proceed to such a determination thereof as is provided by law and consistent with the record thereof.

And it will ever pray, etc.

Peoples Natural Gas Company, by John G. Pew, President.
Christy Payne, Gordon & Smith, Attorneys for Appellant.

[fol. 808a] IN SUPERIOR COURT OF PENNSYLVANIA

OPINION OF SUPERIOR COURT—Filed Oct. 31st, 1918

HENDERSON, J.:

This is an appeal by the Peoples Natural Gas Company from an order of the Public Service Commission requiring the appellant to file its tariff and schedule of rates covering its service in supplying natural gas to the Johnstown Fuel Supply Company, a corporation engaged in the furnishing of natural gas in the City of Johnstown. The proceeding originated in an increase of its rates of service by the latter company and the protests filed by certain of the patrons of that company against such increase. At the hearing before the [fol. 809a] Commission on the proposal to increase the rates the fact was developed that the Johnstown Company received its supply of natural gas from the Peoples Natural Gas Company; whereupon, the latter company was summoned by the Commission to appear in the case. That notice having been complied with, the last named company filed its answers to the complaints in the proceeding, denying the jurisdiction of the Public Service Commission to make an order affecting the Peoples Natural Gas Company. After further proceedings before the Commission the answer of the Peoples Natural Gas Company was overruled and the order made from which this appeal was taken. The record of the Public Service Commission having been filed in this court a motion was made by the appellees to dismiss the appeal on the ground that the order complained of was interlocutory and that the appellant was not entitled to be heard until a final determination was made in the complaints against the Johnstown Fuel Supply Company. A preliminary inquiry is thus raised as to the regularity of the appeal, the contention of the movers for its dismissal being that the parties to such a proceeding can only be heard on an appeal to the Superior Court after the whole case is disposed of by the Public Service Commis-

sion in analogy to the practice in appeals from judgments and decrees of courts of law and equity. The position taken by the appellant is that the only action of the Commission affecting it is the order appealed from and that it is in no way interested in, or a party to, the proceeding relating to the increase of rates by the Johnstown Fuel Supply Company. It becomes very clear from an examination of the statute creating the Public Service Commission and declaring [fol. 810a] the jurisdiction thereof and the procedure to be observed in proceedings to be brought before that body as well as in the declaration of the form in which its conclusions shall be made that it is not a court of law. It has quasi judicial functions but they are administrative in character and its jurisdiction must be found in the statute which brought it into existence, and its amendments: W. Va. Pulp and Paper Company vs. Public Service Commission, 61 Pa. Super. Ct., 555. The right of appeal is therefore necessarily statutory and the conditions under which this right may be exercised are to be found in the provision for such appeals. The Act of 1913 as amended by the Act of 1915, P. L. 779, provides that: "Within thirty days after the filing of any finding or determination by the Commission or at the date of the service of any order—unless an application for a re-hearing may be pending and then within thirty days after the refusal of such application—or the entry of an order modifying, amending, rescinding or affirming the original finding, determination or order any party to the proceedings affected thereby may appeal therefrom to the Superior Court." It will be seen that the thing to be appealed from is a "finding" or "determination" or "order of the Commission" and that the party having a right to an appeal is one "affected thereby." It is obvious when we consider the general scope of the powers of the Public Service Commission under the statute that numerous parties might be involved in one proceeding and that various findings or determinations or orders might be made affecting one or all of such parties. It would result in many cases that there would be no final order affecting all the parties alike. The various circumstances of [fol. 811a] the parties and their relation to the matters in controversy would require appropriate action of the Commission as suggested by such circumstances and relations. And this was evidently in contemplation in the use of the terms employed in the enactment. There being no community of interest in many instances the action to be appealed from in each case would be that affecting the party taking the appeal. There is no obscurity in the language used and when it is declared in a statute that any order of the Commission may be appealed from "within thirty days after it is filed, by any person affected thereby" we do not find room for doubt that this was intended to give to any party involved in the proceeding a right to appeal without regard to the determination of the case as to other parties. The fact that the control of corporations given to the Public Service Commission had theretofore been exercised by courts of law does not compel the conclusion that the procedure observed in such courts followed the jurisdiction. The pending case is an illustration of the reasonableness of the conclusion sug-

gested. The appellant was not an original party to the proceeding. The only order affecting it requires it to file a schedule of rates. Compliance with that order might end the proceeding so far as the appellant is concerned. There is no issue joined in which the appellant must necessarily participate. The present appeal raises the whole question of the appellant's responsibility and of the jurisdiction of the Commission to compel it to comply with the order. The order may or may not be interlocutory but it is not obviously so. No subsequent proceeding necessarily follows compliance by the appellant with the determination of the Commission. Where a [fol. 812a] statute gives an appeal after the filing of a decree or where the pleadings in a proceeding in equity call for a definitive decree as in Sinking Spring Water Co. vs. Gring, 257 Pa., 340, purely interlocutory action of the court will not support an appeal. But the statute here gives an appeal from a finding, determination or decree which prejudicially affects a party and the appellant we think is now entitled to a review of the case against it.

Two objections are presented to the action of the Public Service Commission: 1, that the Peoples Natural Gas Company is not a public service company nor subject to the provisions of the Public Service Company Law with respect to the sale of natural gas to the Johnstown Fuel Supply Company, and 2, that "what the Peoples Natural Gas Company does is interstate commerce and beyond the power of the Commission." The Peoples Natural Gas Company is a Pennsylvania corporation chartered under the Act of May 29, 1885, P. L. 29. The statute authorizes the incorporation of such companies for the purpose of producing, dealing in, transporting and storing and supplying natural gas to such persons, corporations or associations within convenient connecting distance of its line of pipe as may desire to use the same. The right of eminent domain for the laying of pipe lines for the transportation and distribution of natural gas is given and in the 10th section it is enacted that "The transportation and supply of natural gas for public consumption is hereby declared to be a public use and it shall be the duty of corporations or*agn*ized or provided for under this act, to furnish to consumers along their lines and within their respective districts natural [fol. 813a] gas for heat or light or other purposes as the corporations may determine." Under the authority of its charter the appellant has been engaged for many years in the production of natural gas and the sale thereof in Pittsburgh, Wilkinsburg, Greensburg, Latrobe, Cresson, Gallitzin, Altoona and other localities. We do not understand that it denies its responsibility under the law with respect to its business in the communities where its operations are principally carried on. Its position is that with respect to the business at Johnstown it deals with one customer, the Johnstown Fuel Supply Company; that its sales to that company are "at wholesale" and that because of this manner of disposing of its product it is not exercising its power as a public service corporation. The evidence shows that a contract was entered into between The Peoples Natural Gas Company and the Johnstown Fuel Supply Company under which the former company agreed to supply natural gas to the

latter as provided in the contract, the consideration to be paid being "an amount equal to 70% of its gross receipts from the sales of natural gas to consumers paying domestic rates" and "a sum equal to 75% of the gross receipts to others than domestic consumers." The relationship between the two companies as contended by the appellant is purely a contract relationship; that there is not a joint relationship between the companies in the supplying of gas to the city of Johnstown nor a public service rendered by the Peoples Natural Gas Company. It is contended on behalf of the appellees that the provisions of the contract between the companies establishes a joint service; that the appellant controls the price of gas in Johnstown by fixing the rate at which it is sold; that the Johnstown Company has [fol. 814a] no other source of supply and that there is co-operation between the two companies in providing a supply of gas and collecting the compensation for its use. We think it unnecessary to enter into a discussion of this aspect of the case for as we view the attitude of the Peoples Natural Gas Company in the light of the statute under which it was created it is engaged in the exercise of a public use with respect to the production and supply of natural gas. It is because of the character of its service that the company has corporate existence. It occupies the highways of the commonwealth and may exercise the right of eminent domain and as shown by the evidence has exercised that right with respect to a portion of its pipe lines. Its only business as disclosed by the evidence is the production and supplying of gas. It does transport the gas from the source of supply to the distributing points but this transportation is incidental merely to the business in which it is engaged. It is necessary that the gas be transported in pipes but nothing in the evidence tends to show that the defendant is a common carrier. It does not hold itself out as a transporter of gas for other companies or for private individuals. It is the owner of all the gas that is in its pipes and it has never engaged in gas transportation as a business. It delivers its commodity by the use of pipes but this is done by every water company or gas company supplying a town or city and it would scarcely be contended that such companies are engaged in the transportation of freight; Carothers Appeal, 118 Pa., 468. The legislature has declared that the business in which the appellant is engaged, the transportation and supply of natural gas for public consumption, is a public use and this is primarily a question for the [fol. 815a] legislative department of the Government. The presumption is in favor of the legislative declaration subject to the judicial inquiry whether the use is in fact a public use; Penna. Mutual Life Ins. Co. vs. Philadelphia, 242 Pa., 47. The exercise of authority by the legislature is not to be set aside except on the clearest necessity, and this necessity is not apparent where the company comes into existence under the very statute which defines its character and the nature of its service. What the company did was from the beginning subject to the conditions under which it existed at all. The public had no interest in, or right to, the gas of the promoters of the Peoples Natural Gas Company until

the latter for the purpose of obtaining the advantages accorded to them under the statute organized their company. The owners were not compelled to give to the public an interest in their supply of gas but they became under obligation to the laws of the Commonwealth if they used it in the manner prescribed by that law. When the share holders accepted the charter of the company and proceeded to exercise the franchises thereby granted they invested the public or such limited portion of the public with a use or right of use in the commodity which they supplied. This constitutes a public use—such a use as might have been in the contemplation of the parties when the company was organized: Arnsperger vs. Crawford, 101 Md., 247; Penna. Mu. Life Ins. Co. vs. Philadelphia, supra; Munn vs. Ill., 94 U. S., 113. Does the fact that the Peoples Natural Gas Company deals with the Johnstown Fuel Supply Company under a special contract change the relation of the appellant company to the public? If so, it would seem a logical conclusion that a special con-[fol. 816a] tract with each consumer would have the effect to exempt the company from accountability to the Commonwealth under the public service law. When we consider that a contract either express or implied exists in every case where gas is supplied to a consumer by the company, in most cases for domestic consumption, but in others for the use of manufactories, the distinguishing effect of the contract with the Johnstown Company from that with the Cambria Steel Company and the consumers of gas in any community where the supply pipes of the appellant are located is not apparent. It is not a case of the rendering of separable services. Conceding as claimed by the learned counsel for the appellant that there is no reason why a corporation engaged in one class of service may not engage in various other classes of service by making express or implied professions of them there must in such cases be diverse services. The illustration of a municipality operating a system of water works and at the same time maintaining a sewerage system is a case of diverse services. The case of the Public Service Commission vs. Spokane, etc. R. R. Co., 89 Wash., 599, cited in support of the position was one in which a railroad company having a surplus of power contracted with some individuals and companies for power not needed by it in the operation of its railway line, but this was clearly the case of a company the business of which was the operating of a railroad. All railroad operations were subject to the laws of the state regulating such companies. It was not, and was not held out to be, a power company, but using power in the prosecution of its business it might dispose of its surplus. So here, if the company in the development of its gas territory produced petroleum from some [fol. 817a] of its wells it might dispose of that product without regard to the legislation relating to the service of gas companies. But when the company was by purpose and law committed to the supplying of natural gas as its exclusive business what it does with respect to this commodity is done in the exercise of a public service. The case of Marin Water, etc. Co. vs. Sausalito, 168 Cal., 587, strongly relied on by the appellant arose out of the sale of water by a water company to a town in that state and involved the construction of the Consti-

tution of the state which provided that all water now appropriated or that may hereafter be appropriated for sale, rental or distribution is hereby declared to be a public use, and subject to the regulation and control of the state. The question was whether the sale of water to the municipality constituted a dedication of water to the public use. The court held that the acceptance of that conclusion would destroy private rights in water and convert every sale thereof into a dedication to public use, and that in the opinion of the court the Constitution was not intended to have that effect. What the scope and activities of the company were under the laws of the state is not disclosed. The case does not decide the principle involved in the pending appeal.

The gas supplied by the Peoples Natural Gas Company was all produced from wells in Pennsylvania until that supply became insufficient for the uses of the company because of the extension of its service and the decrease in the quantity of gas produced by the wells. It then, entered into a contract with the Hope Natural Gas Company of West Virginia for a supply of gas from that state. That contract provided that the latter company would deliver at the [fol. 818a] Pennsylvania state line a supply of natural gas which was to be there received by the Peoples Natural Gas Company in its pipe lines. The Hope Natural Gas Company is a West Virginia Corporation which does not do any business in Pennsylvania with respect to its transactions with the Peoples Natural Gas Company. The Peoples Natural Gas Company did not extend into West Virginia and has no operations therein. Its extensive pipe line system holds its supply of gas. About two-thirds of the quantity which it distributed latterly came from the Hope Gas Company. The remainder came from its wells in Westmoreland, Armstrong, Indiana and perhaps other counties in Pennsylvania. The gas from the Pennsylvania wells was mingled with the West Virginia gas in the same pipe line. When the gas was delivered by the Hope Gas Company at the state line there was no determinable destination or ascertained place of consumption in Pennsylvania. It was stored in the pipes of the Peoples Gas Company and in them distributed to various points where it was burned. It is because of this purchase of gas from the Hope Natural Gas Company that the appellant claims exemption from the operation of the laws of Pennsylvania, the position taken being that the gas acquired from the Hope Natural Gas Company is a commodity in interstate commerce and that it is not subject to state regulation, after passing into the ownership and custody of the Peoples Natural Gas Company and being mingled with the gas produced by it in Pennsylvania. Numerous authorities are cited in support of the proposition that the power to regulate commerce among the states was granted by the people by means of the Constitution to the Congress of the United States; that that grant [fol. 819a] is exclusive; that no state may by any law or act prohibit or substantially restrain its freedom; and this principle is held to apply to the facts in the case before us. The general principle asserted is, of course, conceded. The power of Congress to regulate commerce among the states is supreme and as to those

subjects which require a general system or community of regulation its power is exclusive and in subjects admitting of diversity of treatment according to the special requirements of local conditions although the states may act within their respective jurisdiction until Congress sees fit to act, when Congress does act the exercise of its authority overrules all conflicting state legislation. Within these limitations, however, there remains in the states a wide field for the lawful exercise of authority appropriate to territorial conditions until Congress acts although interstate commerce may be affected. Where the subject is one peculiarly of local concern and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such relation to interstate commerce as to be within the reach of federal power: Gillman vs. Philadelphia, 3 Wallace 713; Parkersburg O. R. Trans. Co. vs. Parkersburg, 107 U. S. 691; Pearsall vs. Great Northern Ry. Co., 161 U. S. 646; R. R. vs. Fuller, 84 U. S. 560; Cooley vs. Board of Wardens, 12 Howard 1219. The decision in the Min. Rate Cases, 230 U. S. 352, contains an elaborate discussion of the respective jurisdictions of the state and federal authorities and many cases are cited sustaining the foregoing principle. It is to be observed that the legislation complained of is [fol. 820a] not directed against interstate commerce nor does it assume to impose a restriction or burden thereon. The order of the Public Service Commission merely requires the appellant company to file its schedule of rates. This in no way interferes with the purchase of West Virginia gas at the state line nor does it impede the distribution of the appellants' gas supply throughout the state. If it have any bearing on commerce between the states it is incidental, and on a subject with respect to which Congress has not directly acted and which may, therefore, be assumed to have been left to the control of the state because it is incidental. "Legislation of a state not directed against commerce or any of its regulations but relating to the rights, duties and liabilities of citizens and only indirectly and remotely affecting the operations of commerce is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water or engaged in commerce, foreign or interstate, or in any other pursuit." Smith vs. Ala., 124 U. S., 465; Pittsburgh Coal Co. vs. Louisiana, 156 U. S. 590. This doctrine is applicable, we think, to the case presented by the appellant and is an answer to the argument that the Federal Commerce Law overrides the legislation of the State on the subject involved in this litigation. It is not easy to draw a distinct line separating the jurisdiction of the federal from the state authorities in all cases. Legislation of the states may affect commerce and persons engaged in it in many ways without amounting to a regulation of it and it becomes the duty of the court in the particular case to point out the discriminations which locate the subject on one side or the other of the dividing line. A consideration of all of the facts leads us to the conclusion that the case before us is [fol. 821a] within the class with respect to which the authority of the state has not been taken away.

Nothing has been said thus far of that aspect of the case with respect to which it is contended that the gas obtained from West Virginia was taken out of the operation of the federal commerce law because it became mingled with the general body of property in the state. It is property of a peculiar character necessarily confined in tanks or pipes and distributed from place to place by pressure through diverging pipes. It was not consigned from one state to a terminus in another. It was delivered into the containers of the appellant in state of Pennsylvania and controlled by the latter in its distribution from place to place and so mingled with the Pennsylvania gas that its identity as an imported product was entirely lost. It would seem to have as fully lost its distinctive character as an import as did the coal in the case of Brown vs. Houston, 114 U. S. 622, where a flat-boat loaded with coal at Pittsburgh and floated down the river to Louisiana was held to have become merged in the property of the state although it remained in the boat in the same condition in which it was shipped from Pittsburgh and was merely moored to the river bank. A like conclusion was reached in Pittsburgh Coal Co. vs. Bates, 156 U. S. 577.

It does not seem to be denied that the appellant is subject to regulation as a public service company with respect to part of its business in the state nor could this be successfully done. The authorities cited in Munn vs. Ill., supra, show conclusively the authority of the state and a discussion of the subject would be superfluous. Much reliance is placed on the decision in Landon Publishing Utilities Co., 242 Fed. Rep., 684. The principle ground on [fol. 822a] which the case was decided was that the rate for gas was a charge on transportation and as the transportation was between states it was a burden on interstate commerce. The other reason was that the rates fixed were confiscatory. It appeared that the gas was sold by the company that produced and transported it and not by a purchaser within the state.

Since the foregoing opinion was written the learned counsel for the appellant have called our attention to the decision of the Supreme Court of the United States in the case of Western Union Telegraph Company and United Telegram Company, plaintiffs in error vs. Calvin H. Foster and Frederick J. Macleod, et al., members of the Public Service Commission of Massachusetts, delivered May 20th, and have suggested that the opinion supports their contention. The contention there was the right of Calvin H. Foster, one of the defendants, to have furnished to him the continuous quotations of the New York Stock Exchange by means of ticker service, as furnished by the plaintiffs in error to other brokers, the Public Service Commission of Massachusetts having determined that the refusal so to supply him was an unlawful discrimination. One of the defenses presented to the action of the Commission was that the transaction was interstate commerce and therefore, not subject to the control of the Public Service Commission. The quotations were sent from New York by the Western Union Telegraph Company in the name of the Gold and Stock Telegraph Company to the office of the latter in Boston and were thence transmitted by an operator to the tickers

in the offices of the brokers who had subscribed therefor. The United Telegram Company, one of the plaintiffs in error, is a New [fol. 823a] Jersey corporation which received quotations from Boston alone where it had its principal office outside of New Jersey. Its quotations were furnished by the Stock Exchange in New York, telegraphed to the Boston office over a wire of the Postal Telegraph Cable Company and thence transmitted to customers as in the other case. On this state of facts the decision of the court was that the transmission of the quotations did not lose its character of interstate commerce until it was completed in the brokers' offices and that interference with the transmission was not within the power of the state. It was further held that the analogy of a receiver of a package breaking bulk and selling in retail trade did not apply. Upon this subject the court said "Unlike the case of breaking bulk for subsequently determined retail sales, in these the ultimate recipients are determined before the message starts and have been accepted as the contemplated recipients by the Exchange." The contemplated and adopted course of business was a transmission as continuous and rapid as communication by telegraph could make it from the Stock Exchange to the broker's office and inasmuch as the transmission from New York to Massachusetts was interstate commerce it so continued until it reached the point where the parties originally intended that the movement should finally end. The conclusion is based on the continuity of a definite service pursuant to a contract as agreed upon by the parties. There was no break in the transit of the communication except such as was made necessary by the translating of the code terms in the office in Massachussetts. The principle applied to the facts is clear but there is a marked difference between these facts and those exhibited in [fol. 824a] the business operations of the appellant. After an examination of the decision we are not convinced that it controls the case before us.

On a consideration of the whole subject we reach the conclusion that the order complained of was within the authority of the Public Service Commission. It follows that the appeal should be dismissed.

Appeal dismissed at the cost of the appellant.

IN SUPREME COURT OF PENNSYLVANIA

October Term, 1919, Nos. 19 and 20

PEOPLES NATURAL GAS CO., Appellant, and JOHNSTOWN FUEL SUPPLY COMPANY

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF Pennsylvania and The Cambria Steel Company and Louis Franke, Intervening Appellees.

Appeals from Superior Court Affirming Orders of Public Service Commission

OPINION OF SUPREME COURT OF PENNSYLVANIA

Per CURIAM:

The order of the Public Service Commission of which the Peoples Natural Gas Company complains on these appeals, is not a final one. It merely directs the company to file, post and publish, according to [fol. 825a] law, its tariff and schedule of rates covering the service complained of. When there is a final finding and determination by the Commission of the matter complained of, an appeal will lie for the correction of any wrong that may be done to the gas company, and these appeals are dismissed as being premature, the costs to be paid by the appellant.

Filed in the Supreme Court, June 26, 1920.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Complaint Docket, No. 1098—1916

LOUIS FRANKE

vs.

JOHNSTOWN FUEL SUPPLY COMPANY and THE PEOPLES NATURAL GAS COMPANY

COMPLAINT ON BEHALF OF THE CITY OF JOHNSTOWN AND DOMESTIC CONSMERS OF NATURAL GAS RESIDENT THEREIN AGAINST ALLEGED TARIFF OF RATES FILED BY THE PEOPLES NATURAL GAS COMPANY ON JULY 24TH, 1920—Filed August 25, 1920.

To the Honorable the Members of the Public Service Commission of the Commonwealth of Pennsylvania:

The complaint of Joseph Caufliel, successor to Louis Franke in the office of Mayor of the City of Johnstown, respectfully represents.

[fol. 826a] (a) That complainant duly succeeded Louis Franke as Mayor of the City of Johnstown on the first Monday of January, 1920, and is a resident of said city and files this complaint in his capacity as Mayor of said City pursuant to authorization by council of said city on behalf of the residents and taxpayers residing therein; and also files this complaint in behalf of himself as a domestic consumer of natural gas in said city and on behalf of other consumers of natural gas residing therein.

(b) That under date of December 4, 1917, your Honorable Commission, after certain proceedings at the above number of its Com-

plaint Docket, made an order overruling the demurrer of one of the above respondents, namely The Peoples Natural Gas Company, and directing it to file, post and publish, according to law, its tariff and schedule of rates covering the service rendered by it at the City of Johnstown within 15 days after service of said order.

(c) That upon appeal by the said Peoples Natural Gas Company to the Superior Court of Pennsylvania, to No. 111 April Term, 1918, of said Court, the order of your Honorable Commission was affirmed, and an appeal taken by said Peoples Natural Gas Company from the judgment of said Superior Court to the Supreme Court of Pennsylvania, to No. 20 October Term, 1919, was dismissed by said Supreme Court on June 28, 1920.

(d) That on the 24th day of July, 1920, the said Peoples Natural Gas Company filed in the Bureau of Rates and Tariffs of your Honorable Commission a paper purporting to be a tariff and schedule of rates covering the service rendered by it at the City of Johnstown, [fol. 827a] and which said paper is entitled "Supplement No. 2 to P. S. C. Pa. No. 7" of the tariffs of the said Peoples Natural Gas Company and is intended by said Peoples Natural Gas Company to be a compliance by it with the said order of your Honorable Commission; and complainant respectfully refers your Honorable Commission to said paper, as filed in said Bureau, for detailed information with reference to its contents.

(e) Complainant avers that said paper is not a tariff and schedule, within the meaning of the Public Service Company Law, showing the prices, charges, rates and compensation asked, demanded and received by said Peoples Natural Gas Company for the public service rendered by it at said City of Johnstown.

(f) If your Honorable Commission should be of opinion that said paper, and the exhibits thereto attached, amount to a substantial compliance by said Peoples Natural Gas Company with said order of your Honorable Commission, dated December 4th, 1917, complainant hereby complains against the prices, charges, rates, etc., set forth in and contemplated by the contract attached to said alleged tariff and schedule as unjust, unreasonable, unjustly discriminatory and in violation of paragraph (b) of section 1 of Article II of the Public Service Company Law.

Wherefore complainant prays that said alleged tariff and schedule be stricken from the records of your Honorable Commission, or that your Honorable Commission determine and prescribe, by specific order, the maximum, just, due, equal and reasonable rates and charges to be thereafter established, demanded, exacted or charged [fol. 828a] by the said Peoples Natural Gas Company for the natural gas furnished by it at said City of Johnstown.

Joseph Cauffiel, Mayor of the City of Johnstown.

Jurat showing the foregoing was duly sworn to by Joseph Cauffiel omitted in printing.

[fol. 829a] BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

PETITION ON BEHALF OF THE CITY OF JOHNSTOWN AND DOMESTIC CONSUMERS OF NATURAL GAS RESIDENT THEREIN FOR AN ORDER OF THE PUBLIC SERVICE COMMISSION RESTRAINING THE PEOPLES NATURAL GAS COMPANY AND JOHNSTOWN FUEL SUPPLY COMPANY FROM DISCONTINUING THE SUPPLYING OF NATURAL GAS FOR PUBLIC CONSUMPTION IN THE CITY OF JOHNSTOWN AND TERRITORY ADJACENT THERETO—Filed Sept. 1, 1920.

To the Honorable the Members of the Public Service Commission of the Commonwealth of Pennsylvania:

The complaint and petition of Joseph Cauffiel, successor to Louis Franke in the office of Mayor of the City of Johnstown, respectfully represents:

1. That petitioner duly succeeded Louis Franke in the office of Mayor of the City of Johnstown, on the 1st Monday of January, 1920, and is a resident of said city, pursuant to authorization by the council of said city, on behalf of the residents and tax-payers residing therein; and also files this petition in behalf of himself as a domestic consumer of natural gas in said city and on behalf of other consumers of natural gas residing therein and adjacent thereto.

2. That the attorneys for the complainant in this proceeding are Tillman K. Saylor, City Solicitor of the City of Johnstown, and Francis B. Hamilton, Johnstown, Pa., and J. E. B. Cunningham, Harrisburg, Pa.

[fol. 830a] That the address of Johnstown Fuel Supply Company is Johnstown, Pa., and its attorney in this proceeding is David I. McCahill, Pittsburgh, Pa., and that the address of the Peoples Natural Gas Company is Pittsburgh, Pa., and its attorneys in this proceeding are Messrs. Gordon & Smith, and Christy Payne, Esq., Pittsburgh, Pa.

3. That the Johnstown Fuel Supply Company, one of the respondents, is a public service corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having been incorporated May 3rd, 1907, under an act entitled "An act to provide for the incorporation and regulation of natural gas companies," Approved May 29, 1885, P. L. 29, for the purpose of producing, dealing in, distributing, storing and supplying natural gas in the City of Johnstown, in the County of Cambria, State of Pennsylvania, and its suburbs as well as such other places along the right of way of the pipe line or lines, and branches, of the said company as may desire to use the same.

4. That The Peoples Natural Gas Company, the other respondent herein, is a public service corporation organized and existing under the laws of the State of Pennsylvania, having been incorporated the 26th day of June, 1885, under said Act of May 29, 1885, P. L. 29,

for the purpose of producing, dealing in, transporting, storing and supplying natural gas to such persons, corporations, or associations within convenient connecting distance of its line of pipe as may desire to use the same; and, by various amendments and extensions to its charter, has enlarged its field of production and acquired the right [fol. 831a] and assumed the duty of supplying natural gas to the public of the said City of Johnstown among other places.

5. That by Section 10 of the said Act of May 29, 1885, P. L. 29, as amended by Act of May 11, 1897, P. L. 50, it is provided that "the transportation and supply of natural gas for public consumption is hereby declared to be a public use, and it shall be the duty of corporations organized or provided for under this act to furnish to consumers along their lines and within their respective districts natural gas for heat or light or other purposes, as the corporation may determine."

That the said Peoples Natural Gas Company has been engaged in the transportation and supplying of natural gas for public consumption in and to various places in the western part of Pennsylvania and as far east as the City of Altoona and has exercised its right of eminent domain under the laws of the State of Pennsylvania for the purpose, inter alia, of the laying of pipe lines for the transportation and distribution of natural gas to the said City of Johnstown.

6. That for a number of years last past the said Johnstown Fuel Supply Company and the said Peoples Natural Gas Company, in the exercise of their charter rights and privileges and the performance of their charter obligations and duties, have been jointly supplying natural gas for public consumption in the said City of Johnstown—the said Peoples Natural Gas Company procuring by production and purchase the necessary supply of natural gas and transporting the same to the City of Johnstown and the said Johnstown Fuel Supply Company distributing the said natural gas to the domestic consumers resident therein or adjacent thereto.

[fol. 832a] 7. That under date of December 4, 1917, your Honorable Commission, after certain proceedings at the above number of its Complaint Docket relative to the rates charged by the said Peoples Natural Gas Company and the said Johnstown Fuel Supply Company for gas supplied to domestic consumers in the said City of Johnstown, made an order overruling the demurrer of one of the above respondents, namely, The Peoples Natural Gas Company, and directing it to file, post and publish according to law its tariff and schedule of rates covering the service rendered by it at the said City of Johnstown, within fifteen (15) days after service of said order.

8. That upon appeal by the said Peoples Natural Gas Company to the Superior Court of Pennsylvania to No. 111 April T. 1918, of said Court, the order of your Honorable Commission was affirmed and an appeal, taken by said Peoples Natural Gas Company from

the judgment of said Superior Court to the Supreme Court of Pennsylvania, to No. 20, October T., 1919, was dismissed by said Supreme Court on June 28, 1920.

9. That on the 24th day of July, 1920, the said Peoples Natural Gas Company filed in the Bureau of Rates & Tariffs of your Honorable Commission a paper purporting to be a tariff and schedule of rates covering the service rendered by it at the said City of Johnstown, which paper is entitled "Supplement No. 2 to P. S. C. Pa. No. 7" of the tariffs of the said Peoples Natural Gas Company and is intended by said Peoples Natural Gas Company to be a compliance by it with the said order of your Honorable Commission.

10. That attached to said paper, as Exhibit 2 thereof, is a copy of the following letter addressed by the Vice President of the said [fol. 833a] Peoples Natural Gas Company to the said Johnstown Fuel Supply Company.

"The Peoples Natural Gas Company, 424 Sixth Avenue, Pittsburgh, Pa.

July 25, 1919.

Johnstown Fuel Supply Company, Johnstown, Pa.

GENTLEMEN:

Attention of P. J. Morissey, General Manager

It is provided in the 2d and 3d articles of the written agreement, dated August 12th, 1909, between The Peoples Natural Gas Company, termed the Seller, and Johnstown Fuel Supply Company, termed the Buyer, that the Seller may terminate the deliveries of gas to the Buyer on giving written notice.

The available supply of gas has been diminishing with such rapidity in the past few years that this Company does not have enough gas to satisfy the requirements of consumers directly connected with its plants; the shortage will be marked in the coming winter if it should be an average winter, as each month sees a further decline in the available supply.

Under the circumstances this Company deems it advisable to give your Company written notice that the supply of natural gas to your Company will be entirely discontinued on and after the first day of October, 1920, at which time this Company desires that [fol. 834a] the contract relations between the Companies shall terminate.

More than twelve months' notice is given, in order that ample time may be allowed your Company to rehabilitate its artificial gas works or to take such other steps as it may desire.

I take this occasion also of again calling your attention to the money which your Company owes this Company, and request that you make prompt payment of the bills which have been rendered, and which now amount to a very considerable sum.

The Peoples Natural Gas Company, by J. B. Tonkin, Vice President."

In addition to said Exhibit No. 2, on the first page of said Supplement No. 2 to P. S. C. Pa. No. 7, filed as aforesaid, appears the following notice:

"Notice is also hereby given that The Peoples Natural Gas Company has elected to terminate deliveries of natural Gas to the Johnstown Fuel Supply Company on the first day of October, 1920, and in accordance with the second and third articles of the agreement dated August 12, 1909, between said companies, has given written notice to the Johnstown Fuel Supply Company of said termination; a copy of said notice is attached hereto, marked "Exhibit 2."

11. That the domestic consumers of natural gas in the City of Johnstown—numbering more than 11,000 families—are wholly dependent for their supply of natural gas upon the said Peoples Nat- [fol. 835a] ural Gas Company and the said Johnstown Fuel Supply Company, and the carrying into effect of the above mentioned notice and threat that the supply of natural gas to the residents of said city will be discontinued on and after the 1st day of October, 1920, will work irreparable injury to said consumers and to the public as a whole.

12. That petitioner is informed and believes, and therefore avers, that the said notice with respect to the discontinuance of the supply of natural gas to the consumers thereof in the said City of Johnstown will be carried into effect, unless the said Peoples Natural Gas Company and the said Johnstown Fuel Supply Company be restrained from carrying said notice into execution by the order of your Honorable Commission.

Wherefore your petitioner; showing that it is the duty of the said Johnstown Fuel Supply Company, under their charters and under Paragraph (a) of Section 1 of Article 2 of the Public Service Company Law, to furnish and maintain such supply of natural gas to the consumers in said City of Johnstown as shall in all respects be just, reasonable adequate and practically sufficient for the accommodation and safety of its patrons and the public, and that the continuance of an adequate supply of natural gas is necessary and proper for the service, accommodation, convenience and safety of the public of the City of Johnstown, and vicinity; prays your Honorable Commission, in the exercise of the powers conferred upon it by the Public Service Company Law and particularly by Section 1 of Article 5 thereof, to issue an order against the said Peoples Natural Gas Company and the said Johnstown Fuel Supply Company re- [fol. 836a] straining them, and each of them, their officers, agents and employees, from discontinuing the supplying of natural gas to the consumers thereof resident in the said City of Johnstown and vicinity, until the further order of your Honorable Commission.

Joseph Cauffiel, Mayor of the City of Johstown.

Jurat showing the foregoing was duly sworn to by Joseph Cauffiel omitted in printing.

[fol. 837a] BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

SEPARATE ANSWER OF PEOPLES NATURAL GAS COMPANY—Filed Sept. 4, 1920

To the Honorable the Public Service Commission of the Commonwealth of Pennsylvania:

The Peoples Natural Gas Company, one of the respondents in this case, makes answer to the complaint filed in the above entitled case and says:

(a) Respondent has no knowledge as to the matters set forth in paragraph (a) of the complaint but is willing for the purposes of this case to admit that they are true.

(b) With the exception of the erroneous statement that the proceedings referred to in paragraph (b) of the complaint were at this number of the proceedings before the Commission, whereas in fact they were at No. 1098 of Complaint Docket, A. D. 1916, the averments contained in paragraph (b) are admitted. Respondent begs leave, however, to refer to the proceedings and order of the Commission therein referred to in order that a complete understanding may be had of the proceedings which took place and the order which was made at No. 1098, A. D. 1916.

(c) The averments of paragraph (c) of the complaint are admitted. Respondent reserves the right, however, to refer to the records, orders and opinions of the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania therein referred to as the best evidence with reference to the matters referred to in this paragraph.

[fol. 838a] (d) The averments of paragraph (d) of the complaint are admitted. Respondent avers that said paper not only purports to be, but is a tariff and schedule of rates, and that it was not only intended to be, but is a full compliance with the order of this Commission.

(e) The averments of paragraph (e) of the complaint are denied. Respondent also denies that it rendered any public service in the City of Johnstown.

(f) The averments of paragraph (f) of the complaint are denied. While respondent also denies the jurisdiction of this Commission to inquire into the prices, charges, rates, etc. set forth in said tariff, it avers that the same are just, reasonable and non-discriminatory.

(g) Respondent avers that it is not engaged in any public service in the City of Johnstown; that respondent's connection with supplying natural gas used in the City of Johnstown is a private contractual relationship between it and the Johnstown Fuel Supply Company, one of the respondents in this case, and that the only relationship between said parties is that disclosed by the contract, a copy of which

is attached to the tariff hereinbefore referred to. That your Honorable Commission has no jurisdiction to compel this respondent to supply natural gas to the Johnstown Fuel Supply Company, or to fix the rates at which said gas shall be supplied, or to compel this respondent to file a tariff or schedule of said rates;

Respondent further avers that the gas furnished by the respondent to the Johnstown Fuel Supply Company is to a large extent natural gas produced in the State of West Virginia and transported and delivered to the Johnstown Fuel Supply Company in the State of [fol. 839a] Pennsylvania (although a relatively small proportion of Pennsylvania gas becomes mingled in the mains in the course of transportation with the West Virginia gas), and the transportation, sale and delivery of the gas so contracted for constitutes interstate, and not intrastate, commerce, and the contract relating thereto which is in existence between the two companies, a copy of which is attached to the tariff hereinbefore referred to, is a contract relating to interstate commerce; that this Commission is without jurisdiction to make any orders with reference thereto, and any order that might be made by this Commission regulating, interfering with, or impairing said contract in any degree would constitute an interference with and an undue burden upon interstate commerce; moreover, the natural gas transported from the State of West Virginia is not produced by the Peoples Natural Gas Company but is produced by a West Virginia corporation and is purchased by the Peoples Natural Gas Company from said West Virginia corporation under the terms of a contract. The said West Virginia corporation is beyond the jurisdiction of your Commission, and it is beyond the power of your Commission to make any order affecting or regulating the price at which the West Virginia corporation sells its gas. The gas so produced by the West Virginia corporation passes through its pipes in West Virginia and through the pipes of the Peoples Natural Gas Company in Pennsylvania in a continuous flow and is delivered by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company's main and by it, after the pressure has been reduced and regulated, distributed through its system of distribution pipes and services to its customers.

[fol. 840a] Wherefore, this respondent prays that the complaint be dismissed.

Peoples Natural Gas Company, by J. B. Tonkin, Vice President.

Jurat showing the foregoing was duly sworn to by J. B. Tonkin omitted in printing.

[fol. 841a] BEFORE THE PUBLIC SERVICE COMMISSION

ORDER REQUIRING THE CONTINUANCE OF SERVICE UNTIL FURTHER ORDER

These matters being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file

and it appearing to the Commission at the hearing hereon that the Peoples Natural Gas Company had given notice of its intention to discontinue the supplying of natural gas to the Johnstown Fuel Supply Company, respondent, for the public service rendered by said companies in the City of Johnstown, and further hearings having been adjourned to a time to be fixed by the Commission between October 15 and November 1, 1920.

Now, to wit, September 13, 1920, It Is Ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, parties respondent, be and they are hereby severally required and directed to continue the public service rendered by each of them in the supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission.

The Public Service Commission of the Commonwealth of Pennsylvania. (Signed) Milton J. Brecht, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 842a] Before the Public Service Commission of Pennsylvania

Separate Answer of the Peoples Natural Gas Company—Filed Sept. 14, 1920

To the Public Service Commission of the Commonwealth of Pennsylvania:

The Peoples Natural Gas Company, one of the respondents in this case, makes answer to the complaint filed in this case and says:

(1) This respondent has no knowledge as to the matters of fact set forth in the first paragraph of the complaint and demands proof of the same.

(2) The averments in the second paragraph of the complaint are admitted except the averment that Christy Payne, Esq., is one of the attorneys of this respondent in this proceeding. The respondent's attorneys in this proceeding are Gordon & Smith and Arthur E. Young, of Pittsburgh, Pennsylvania.

(3) The averments of the third paragraph of the complaint are admitted.

(4) It is true that this respondent is a corporation organized and existing under the provisions of the Act of 1885, P. L. 29. Its purpose as set forth in its articles of association was "producing, dealing in, transporting, storing and supply natural gas" in the place or places specified in the charter, to wit, "Cities of Pittsburgh and Allegheny in the County of Allegheny." By proper action of its stockholders, the territory where the Company intended to supply gas to

consumers was enlarged by including the City of Johnstown and a certificate of said extension was duly filed in the office of the Secre- [fol. 843a] tary of the Commonwealth. This respondent never obtained the assent of the Councils of the City of Johnstown to its entry upon the streets or highways of said city. It has no franchise ordinance from the City of Johnstown and has no power and is under no duty to occupy the streets of said City or supply natural gas therein. The other allegations of paragraph four of the complaint are denied.

(5) The statements of the fifth paragraph of the complaint are admitted except the allegation that the respondent exercised its right of eminent domain for the purpose "of the laying of pipe lines for the transportation and distribution of natural gas to the said City of Johnstown." It is true that the petitioner made a survey and located a pipe lino for the transportation of natural gas from a point near the town of Derry in Westmoreland County, Pennsylvania, to a point near the city line of the City of Johnstown in Cambria County and that it proceeded to construct that line and that in connection with the construction of the same it did file a bond to secure one Garvey who owned a piece of land in Lower Yoder Township in Cambria County, Pennsylvania, for the damages which might result to his property in the construction of said line. Said appropriation proceeding was subsequently abandoned and a settlement made with Garvey and a grant obtained by him of a right of way for said pipe line. No part of said pipe line as located or constructed was situate within the City of Johnstown or approached nearer than 500 feet to the city limits of said town and this respondent has never located any lines within the City of Johnstown nor sold or supplied any natural gas to any inhabitants thereof. The complainant's property is not [fol. 844a] located upon or contiguous to any of respondent's lines and respondent has never supplied him with natural gas.

(6) The averments of paragraph 6 of the complaint are denied. The fact is that under an agreement between the Peoples Natural Gas Company and the Johnstown Fuel Supply Company, dated August 12, 1909, this respondent has sold the Johnstown Fuel Supply Company natural gas and delivered the same to that Company at the point of connection between the pipes of the two companies located in Lower Yoder Township, Cambria County. This respondent is delivering natural gas under the terms of said contract but has given notice to the Johnstown Fuel Supply Company that the contract and the sale of gas thereunder will terminate on the first day of October, 1920. This respondent had, according to the terms of the contract, the right to give said notice and to terminate the sale of natural gas.

(7) The averments contained in the seventh paragraph of the petition are incorrect to the extent that the order referred to did not require respondent to publish a tariff or schedule of rates "covering the service rendered by it at the said City of Johnstown." Respondent begs leave to refer to said proceeding and order as the best evidence of what took place and of the terms of the order which the Commission made.

(8) The averments in the eighth paragraph of the petition are admitted. Respondent reserves leave, however, to refer to the proceedings in the Superior Court and Supreme Court of Pennsylvania therein referred to.

[fol. 845a] (9) The averments of the ninth paragraph of the petition are admitted.

(10) The averments of the tenth paragraph of the petition are admitted. Respondent avers, however, that the existence of the notices therein referred to and of the fact that the respondent intended to discontinue the supply of natural gas on the first day of October, 1920, was well known to the complainant long before said tariff was filed. On the 26th of August, 1919, this respondent wrote a letter to the complainant, to wit, to the City Solicitor of the complainant, enclosing copies of the notice that was sent by the respondent to the Johnstown Fuel Supply Company and the reply of the Johnstown Fuel Supply Company thereto, all of which were received in the due course of mail by the complainant in this case, and the complainant has had full knowledge for more than a year past that the respondent would stop selling natural gas to the Johnstown Fuel Supply Company on the first day of October, 1920.

(11) The averments of the eleventh paragraph of the complainant, as therein stated, are denied. Respondent believes that there are about 11,000 domestic consumers of natural gas in the City of Johnstown who are dependent for the supply of natural gas upon the Johnstown Fuel Supply Company and it is true that unless the Johnstown Fuel Supply Company secures some source of supply, these people will be without a supply of natural gas after the first day of October next. Owing to the consumption of natural gas it has become and is impossible for this respondent to procure an adequate and full supply of natural gas for the use in cold winter weather of domestic consumers who are located upon its own lines. [fol. 846a] It has no surplus gas to dispose of and cannot obtain any and any natural gas that might be delivered by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company would to the extent of the gas so delivered cause a shortage of natural gas to domestic consumers upon respondent's own lines. Owing to the conditions in the City of Johnstown the inhabitants thereof will suffer less deprivation from the discontinuance of the supply of natural gas than the consumers on the respondent's lines would if the supply to them was discontinued. The consumption of natural gas in Johnstown has always been limited and it has been used rather as a luxury than a necessity. Coal is and always has been cheap and readily obtainable in Johnstown from the local mines. The houses are constructed with proper flues and are equipped with appliances for burning coal. The people have relied upon coal for heat and to a large extent for cooking, and the average consumption of natural gas person in Johnstown has been less than half the average consumption by consumers upon respondent's lines. Furthermore, the Johnstown Fuel Supply Company is the

owner of an artificial gas plant which would be of value in the production and distribution of manufactured gas. Furthermore, the people of Johnstown are not willing to pay a price for natural gas which would be sufficient to justify its production, distribution and supply by any company. The price that is now paid by the Johnstown Fuel Supply Company to the Peoples Natural Gas Company for gas is less than the Peoples Natural Gas Company has to pay at the West Virginia state line for the gas purchased by it.

[fol. 847a] —. Respondent admits that it intends to and will, unless restrained, cut off the supply of natural gas from the Johnstown Fuel Supply Company on the first day of October next. It avers that it has a right to do so under the terms of the contract and that it is under a duty to do so for the benefit *for the benefit* of consumers upon it own lines. The Johnstown Fuel Supply Company has failed to pay the Peoples Natural Gas Company for all the gas furnished to it and said Company now owes this respondent upward of $180,000 which is due and unpaid and respondent would be justified in cutting off the supply of gas for this if for no other reason.

(13) Respondent avers that it is not engaged in any public service in the City of Johnstown; that respondent's connection with supplying natural gas used in the City of Johnstown is a private contractual relationship between it and the Johnstown Fuel Supply Company, one of the respondents in this case, and that the only relationship between said parties is that disclosed by the contract, a copy of which is attached to the tariff hereinbefore referred to. That your Honorable Commission has no jurisdiction to compel this respondent to supply natural gas to the Johnstown Fuel Supply Company, or to fix the rates at which said gas shall be supplied, or to compel this respondent to file a tariff or schedule of said rates:

Respondent further avers that the gas furnished by the respondent to the Johnstown Fuel Supply Company is to a large extent natural gas produced in the State of West Virginia and transported and delivered to the Johnstown Fuel Supply Company in the State of Pennsylvania (although a relatively small proportion of Pennsyl-[fol. 848a] vania gas becomes mingled in the mains in the course of transportation with the West Virginia gas), and the transportation, sale and delivery of the gas so contracted for constitutes interstate, and not intrastate, commerce, and the contract relating thereto which is in existence between the two companies, a copy of which is attached to the tariff hereinbefore referred to, is a contract relating to interstate commerce; that this Commission is without jurisdiction to make any orders with reference thereto, and any order that might be made by this Commission regulating, interfering with, or impairing said contract in any degree would constitute an interference with and an undue burden upon interstate commerce; moreover, the natural gas transported from the State of West Virginia is not produced by the Peoples Natural Gas Company but is produced by a West Virginia corporation and is purchased by the Peoples Natural Gas Company from said West Virginia corporation under

the terms of a contract, the said West Virginia corporation is beyond the jurisdiction of your Commission, and it is beyond the power of your Commission to make any order affecting or regulating the price at which the West Virginia corporation sells its gas. The gas so produced by the West Virginia corporation passes through its pipes in West Virginia and through the pipes of the Peoples Natural Gas Company in Pennsylvania in a continuous flow and is delivered by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company's main and by it, after the pressure has been reduced and regulated, distributed through its system of distribution pipes and services to its customers.

[fol. 849a] Wherefore, this respondent prays that the complaint be dismissed.

Peoples Natural Gas Company, by R. D. Beardsley.

Jurat showing the foregoing was duly sworn to by R. D. Beardsley; omitted in printing.

[fol. 850a] BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

ANSWER OF JOHNSTOWN FUEL SUPPLY COMPANY TO THE PETITION FILED ON BEHALF OF THE CITY OF JOHNSTOWN AND DOMESTIC CONSUMERS OF NATURAL GAS RESIDENT THEREIN FOR AN ORDER OF THE PUBLIC SERVICE COMMISSION RESTRAINING THE PEOPLES NATURAL GAS COMPANY AND JOHNSTOWN FUEL SUPPLY COMPANY FROM DISCONTINUING THE SUPPLY OF NATURAL GAS FOR PUBLIC CONSUMPTION IN THE CITY OF JOHNSTOWN AND TERRITORY ADJACENT THERETO—Filed Sept. 28, 1920.

To the Honorable the Members of the Public Service Commission of the Commonwealth of Pennsylvania:

The answer of the Johnstown Fuel Supply Company, one of the respondents above named, respectfully represents that:

The truth of the statements contained in paragraphs one (1) to ten (10) inclusive of the above named petitions are admitted.

In respect to the statements contained in paragraph ten (10) of said complaint, respondent, Johnstown Fuel Supply Company, respectfully states that at the time said letter referred to in said paragraph ten (10) dated June 25, 1919, was received from the Peoples Natural Gas Company, Johnstown Fuel Supply Company acknowledged receipt thereof, but denied the right of the Peoples Natural Gas Company to discontinue the supply of gas as set forth in said [fol. 851a] letter, and which said reply of said Johnstown Fuel Supply Company is as follows, to wit:

"Johnstown Fuel Supply Company

August 25, 1919.

Peoples Natural Gas Company, 424 Sixth Avenue, Pittsburgh, Penna.

GENTLEMEN: Your letter of July 25, 1919, was received by me under date of August 14, 1919.

Under the present circumstances the Johnstown Fuel Supply Company does not recognize the right of the Peoples Natural Gas Company to discontinue its public obligation of furnishing the City of Johnstown and its inhabitants with a supply of natural gas for their use.

The Johnstown Fuel Supply Company must also at this time again dispute your statement that this company is indebted to you other than for current accounts.

Yours very truly, (Signed) P. J. Morrissey."

Respondent, Johnstown Fuel Supply Company, admits the truth of the statements contained in paragraph eleven (11) of said petition and in that particular, said respondent respectfully states that on the thirty-first day of December, 1906, there was in existence in the City of Johnstown, a predecessor of the Citizens Light, Heat and Power Company, a corporation duly organized and existing under the laws of the State of Pennsylvania, which, pursuant to its charter [fol. 852a] powers, was manufacturing and distributing in said City of Johnstown, artificial gas to persons, partnerships and corporations residing therein and adjacent thereto, as well as to the City of Johnstown.

On said thirty-first day of December, 1906, George W. Crawford and others entered into a contract with the Peoples Natural Gas Company, which said contract by its terms provided for the organization of the Johnstown Fuel Supply Company, one of the respondents herein, for the transportation of natural gas in and through the City of Johnstown, Pennsylvania, and in and through all boroughs, villages and places in the immediate vicinity of the City of Johnstown, and which said contract was thereafter ratified by said Johnstown Fuel Supply Company after its incorporation.

Thereafter and on the twelfth day of August, 1909, the said Peoples Natural Gas Company and the Johnstown Fuel Supply Company entered into another certain written agreement, attached as Exhibit No. 1 to Supplement No. 2 of Peoples Natural Gas Company's P. S. C. Pa. No. 7, now on file with your honorable commission, and which provided, among other things, for the production and transportation of natural gas by the Peoples Natural Gas Company to a point at or near the City Line of the City of Johnstown, at which point the said gas was to be taken by the Johnstown Fuel Supply Company and distributed by said Company to the public in the City of Johnstown and surrounding communities.

Said contract provided in paragraph twenty (20) thereof that it was made in contemplation of the merger and consolidation of said

Johnstown Fuel Supply Company with said Citizens Light, Heat and [fol. 853a] Power Company, so that one company would own all of the facilities located in said City of Johnstown and vicinity for the manufacture and distribution of gas, whether artificial gas or natural gas.

Said agreement provided in paragraph five (5) thereof that the Johnstown Fuel Supply Company would, during the continuance of said contract, purchase and take from the seller, all the natural gas required to supply its consumers paying domestic rates up to the capacity of the existing twelve-inch pipe line, Derry to Johnstown, except as in said contract provided.

Said contract provided in paragraph nine (9) thereof that the said Johnstown Fuel Supply Company, after its merger and consolidation with said Citizens Light, Heat and Power Company, would push to the fullest extent possible the sale of natural gas in said city and surrounding communities, and in that regard paragraph nine (9) of said agreement provided, among other things, as follows:

"And the Buyer (referring to Johnstown Fuel Supply Company after being merged and consolidated with Citizens Light, Heat and Power Company) further agrees that with regard to such sections of its artificial gas system as would, if tied into and made part of its system now distributing natural gas, enable it to quickly, naturally and readily increase the number of domestic consumers using natural gas to at least seventy-five hundred (7500), it will, so far as the same may be lawfully and practicable, disconnect the same from its artificial system and tie such sections into and make them part of its natural gas distributing system, and the Buyer further [fol. 854a] agrees that wherever a sufficient number of its consumers in districts where its artificial gas system is located may desire its distributing system, the buyer, if it be possible for it from a business and legal standpoint so to do, will forthwith disconnect such districts from such artificial gas system and make them part of its natural gas system. Nothing in this paragraph (9) contained shall bind the buyer to make any change of any part of its artificial gas system into a part of its natural gas system if such change exposes the Buyer to any liability or forfeiture. The provisions of this paragraph (9) as to the extension of the natural gas distributing system of the Buyer shall apply or be effective only so long as the Seller is supplying the entire requirements of the Buyer; and if and so long as the Seller is not supplying the amount required for the domestic consumers of the Buyer, the Buyer may discontinue or disconnect such a proportionate part of its natural gas system as is not needed to fully and adequately distribute the amount of natural gas which the Buyer is obligated to take and which the Seller is actually supplying. Nothing in this agreement shall be construed to prevent the Buyer from maintaining and operating its artificial gas system at all times during the life of this contract to the extent that may be necessary to protect its artificial gas franchise or franchises."

Although Johnstown Fuel Supply Company and the Citizens Light, Heat and Power Company were never merged and consoli-

dated into a single company, all the capital stock of Johnstown [fol. 855a] Fuel Supply Company is owned by Citizens Light, Heat and Power Company, and both companies have been managed by the same officers and directors, and pursuant to the provisions of the said contract above quoted, said Citizens Light, Heat and Power Company and the said Johnstown Fuel Supply Company have not only pushed to the utmost the sale and use of natural gas in the City of Johnstown and surrounding communities, but are actually turned over to the Johnstown Fuel Supply Company, for use in the distribution of natural gas, the entire distributing system located in said municipalities, whether laid therein before or after the entering into of said contract, and said Citizens Light, Heat and Power Company, conforming to the conditions of said agreement, has practically discontinued the manufacture of artificial gas and has practically dismantled its artificial gas manufacturing plant, so that at the present time, because of the obligations which the Peoples Natural Gas Company assumed, to furnish natural gas to the citizens of the City of Johnstown, through the distributing system of the Johnstown Fuel Supply Company, the said citizens and the public of the said City of Johnstown and surrounding communities are wholly and completely dependent upon the said Johnstown Fuel Supply Company and the said Peoples Natural Gas Company for an adequate and sufficient supply of natural gas for their needs.

That at the time said contract was entered into, it was fully contemplated that all gas for use in the City of Johnstown and surrounding communities shall be produced by the Peoples Natural Gas Company and delivered to the City Line of the City of Johns- [fol. 856a] town to the Johnstown Fuel Supply Company for distribution in said City and surrounding community, and at no time was it contemplated that the Johnstown Fuel Supply Company would mine for or produce gas for use of the consumers of the City of Johnstown.

Relying upon this arrangement, the said Johnstown Fuel Supply Company has not at any time taken any steps to provide a source of supply for the production of natural gas other than the purchase of such gas from the Peoples Natural Gas Company, and at the present time there is no available source of supply other than the Peoples Natural Gas Company.

Although paragraph three (3) of said contract provides that notice may be given by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company that it will discontinue the supplying of gas to the Johnstown Fuel Supply Company for distribution in the City of Johnstown, it was never contemplated that the Peoples Natural Gas Company would discontinue such supply, except in the event the Peoples Natural Gas Company was unable to secure by production or purchase the amount of gas necessary for delivery under this contract, and in that respect respondent, Johnstown Fuel Supply Company is informed and believes and therefore states that the same notice of termination directed to the Johnstown Fuel Supply Company, dated July 25, 1919, was given

not because of a shortage or diminution of supply on the part of the Peoples Natural Gas Company, but respondent is informed and believes and, therefore, states that the said notice of discontinuance of supply was given for the sole purpose of enabling the Peoples Natural Gas Company to sell its entire available supply of gas to [fol. 857a] other and different communities and to industrial concerns at a higher and more advantageous rate.

Respondent, Johnstown Fuel Supply Company, is ready and willing at all times to continue to distribute to the city of Johnstown and the public thereof, and to persons residing therein and adjacent thereto, such natural gas as is delivered to it by the said Peoples Natural Gas Company.

Unless the Peoples Natural Gas Company continues to furnish to the Johnstown Fuel Supply Company natural gas for distribution as aforesaid, the said City of Johnstown and public thereof, and persons residing therein or adjacent thereto will be unable to secure any natural gas for consumption, because said contract herein above referred to, and under the terms and conditions of which said Peoples Natural Gas Company purports to have the right to discontinue the supplying of natural gas to the Johnstown Fuel Supply Company, provides in Section 23 thereof as follows:

"The territory which it is contemplated the Buyer shall have the right to supply with natural gas, to be supplied by the seller hereunder, shall be the City of Johnstown, as the same may now or hereafter exist, and the following described territory outside of the city, viz: Borough of Westmont, Village of Walnut Grove, Borough of Franklyn, Borough of East Conemaugh, Borough of Dale, Borough of Ferndale, Upper Yoder Township, Lower Yoder Township and Stoneycreek Township. The Seller agrees, during the life of this agreement that it will not (without the written consent of the Buyer) sell or deliver, or contract to sell or deliver to anyone other than the [fol. 858a] Buyer, any natural gas for use or that may be used or consumed within said territory, and it is further agreed that if at any time during the life of this Agreement Buyer gives notice to the Seller that any natural gas produced or transported or delivered by the Seller (other than that sold and delivered to the Buyer by it) is being used or consumed in any part of said territory, and if such use or consumption of such natural gas by any person or corporation continues for more than thirty (30) days after the receipt of such written notice by the Seller, the Seller agrees and shall be bound to pay to the buyer twenty-five cents (25¢) per thousand cubic feet for such natural gas so used or consumed within said territory after the said period of thirty (30) days. And it is expressly agreed that the Seller shall at all events and under all circumstances, and irrespective of the continuance of this Agreement or service hereunder, remain bound until August 12, 1939 (save only in the single case of the prior termination of this Agreement on account of default of the Buyer) by all obligations of this paragraph (23) with regard to keeping all natural gas produced, transported, or delivered by it from use, consumption or sale in said territory."

Respondent, Johnstown Fuel Supply Company, respectfully states, therefore, that if said contract be valid and binding, so as to give the said Peoples Natural Gas Company the right to discontinue the supply of natural gas to the City of Johnstown, as it has threatened to [fol. 859a] do in and by said notice, then said Peoples Natural Gas Company will be unable to furnish natural gas in said City of Johnstown and surrounding communities because of the provision of said contract hereinabove quoted, and that if said Peoples Natural Gas Company be permitted to discontinue the supply of natural gas as it has threatened to do in and by said notice, the City of Johnstown and the public thereof, and all persons residing therein and adjacent thereto will suffer irreparable injury and damage, because there is no other person or corporation authorized to or able to furnish natural gas for use in said city and surrounding communities.

And in that particular, Johnstown Fuel Supply Company respectfully states that the provisions of said contract dated August 12th, 1909, relating to the adequacy of the service and the supply of natural gas and the furnishing of facilities therefor, as well as the rates, tolls and charges for such service, and the terms and conditions under which service is furnished by the said Peoples Natural Gas Company to said Johnstown Fuel Supply Company became inoperative on January 1st, 1914, the effective date of the Public Service Company Law, and that from and after said date the duties and obligations of the Peoples Natural Gas Company and Johnstown Fuel Supply Company, as well as the regulation of each of said companies and the service furnished by each, became vested exclusively in the Public Service Commission of the Commonwealth of Pennsylvania, and that said Peoples Natural Gas Company and said Johnstown Fuel Supply Company are each public service companies and each have assumed the duty and obligation of furnishing natural gas to the City of Johnstown and the public thereof, and to persons residing [fols. 860a & 861a] therein or adjacent thereto, and that any discontinuance in the supply of natural gas to the said City of Johnstown and the public thereof, and to persons residing therein or adjacent thereto, would be a violation of the public duties and obligations of each of said companies, as well as a violation of the terms and provisions of the Public Service Company Law and the rules and regulations of your honorable commission.

For the reasons herein set forth, respondent, Johnstown Fuel Supply Company, respectfully joins in the prayer of the petitioner herein that a restraining order be issued by your honorable commission, restraining the Peoples Natural Gas Company from discontinuing the supply of natural gas to the Johnstown Fuel Supply Company for distribution by said company to the City of Johnstown and the public thereof, and to persons residing therein and adjacent thereto.

Johnstown Fuel Supply Company, by F. T. Hepburn, President.

[fol. 862a] BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

PETITION OF THE PEOPLES NATURAL GAS COMPANY FOR THE VACATION OF THE ORDER OF THE COMMISSION DATED SEPTEMBER 13, 1920, REQUIRING THE PEOPLES NATURAL GAS COMPANY TO CONTINUE THE SUPPLY OF NATURAL GAS TO THE JOHNSTOWN FUEL SUPPLY COMPANY—Filed September 14, 1921

To the Honorable the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of the Peoples Natural Gas Company, one of the respondents in this case, respectfully represents:

(1) The Peoples Natural Gas Company, on or about July 25, 1919, gave written notice to the Johnstown Fuel Supply Company of its election to terminate deliveries of natural gas to the Johnstown Fuel Supply Company on the first day of October, 1920, and on or about August 26, 1919, gave a like notice to the City of Johnstown.

(2) On or about the 24th day of July, 1920, pursuant to an order of your Honorable Commission, the Peoples Natural Gas Company filed in the Bureau of Rates and Tariffs of your Honorable Commission a tariff schedule of rates covering service rendered by it to the Johnstown Fuel Supply Company entitled: "Supplement No. 2 [fol. 863a] to P. S. C., Pa. No. 7 of the Tariffs of the Peoples Natural Gas Company," in which tariff it was set forth that the Peoples Natural Gas Company had elected to terminate deliveries of natural gas to the Johnstown Fuel Supply Company on the first day of October, 1920.

(3) On or about the 27th day of August, 1920, the Mayor of the City of Johnstown filed a petition in this case praying that the Peoples Natural Gas Company and the Johnstown Fuel Supply Company be restrained from discontinuing the supply of natural gas in the City of Johnstown, and thereafter, to wit, on the 13th day of September, 1920, your Honorable Commission made the following order, to wit:

"These matters being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file and it appearing to the Commission at the hearing hereon that the Peoples Natural Gas Company had given notice of its intention to discontinue the supplying of natural gas to the Johnstown Fuel Supply Company, respondent, for the public service rendered by said companies in the City of Johnstown, and further hearings having been adjourned to a time to be fixed by the Commission between October 15 and November 1, 1920.

Now, to wit, September 13, 1920, it is ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, parties respondent, be and they are hereby severally required and

directed to continue the public service rendered by each of them in [fol. 864a] the supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission.

The Public Service Commission of the Commonwealth of Pennsylvania. (Signed) Milton J. Brecht, Acting Chairman.

Attest: John G. Hopwood, Secretary."

(4) The Commission did not make any order fixing the price or the terms upon which said natural gas was to be furnished by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company.

(5) Your petitioner, the Peoples Natural Gas Company, has complied with said order and for a long time past, to-wit, from the first day of October, 1920, down to the time of the filing of this petition, has been supplying natural gas to the Johnstown Fuel Supply Company, as required by said order.

(6) Pursuant to Section Five of the Natural Gas Company Act your petitioner altered its territory for the transportation and supply of natural gas by abandoning the pipe line through which it has been supplying gas to the Johnstown Fuel Supply Company as fully appears from its certificate filed in the office of the Secretary of the Commonwealth of the Pennsylvania on January 27, 1921, and recorded in the office of the Recorder of Cambria County on January 29, 1921, and in evidence in this case, and your petitioner has been prevented from in fact discontinuing the supply of gas to the Johnstown Fuel Supply Company by said order.

[fol. 865a] (7) The Johnstown Fuel Supply Company has recently announced, publicly, that it intends to claim and maintain that your petitioner is not entitled to recover any amount for the gas that it is supplying under the terms of the Commission's restraining order except such as the Johnstown Fuel Supply Company voluntarily pay; for the alleged reasons that no recovery can be had in a court of law because the matter is one entirely within the jurisdiction of this Commission and that this Commission had no power to make any order fixing a rate that would date back to the first day of October, 1920.

(8) If the position taken by the Johnstown Fuel Supply Company, as above stated, is correct, your petitioner by reason of such order is being deprived of this property without compensation and without due process of law in violation of the Constitution of the United States and the Constitution of the State of Pennsylvania and, if, on the other hand, the position of the Johnstown Fuel Supply Company is unsound, the mere raising of such a question and the long time that has elapsed since said order was made without reaching a final decision in this case has subjected your petitioner to great and unreasonable risk of loss. Wherefore, your petitioner prays that said order be dissolved and vacated.

(9) Without waiving its right to further maintain that your Honorable Commission has no jurisdiction over it whatsoever in these proceedings or with reference to the matters involved therein, your petitioner further prays, if your Honorable Commission should refuse to dissolve and vacate said order, that the Commission make [fols. 866a & 867a] a further order for the payment of an adequate sum for natural gas delivered by your petitioner to the Johnstown Fuel Supply Company under the terms of the order referred to herein from the first day of October, 1920 and until the final decision of this case, which sum shall not be less than forty (40) cents per 1000 cubic feet, and, in addition thereto, providing for the giving of proper assurances for the payment of additional amounts that might be found to be just and reasonable at the final hearing of this case to the end that your petitioner shall be made secure in receiving compensation for the gas which it has delivered under the order of the Commission hereinbefore referred to as well as for such gas as it may deliver in the future under the terms of said order, and that your Commission further order that any temporary rate fixed by the Commission shall be ordered to be filed and considered to be the proper tariff covering said rate during the pendency of this proceeding. And it will ever pray, etc.

Peoples Natural Gas Company, by J. B. Tonkin.

[fol. 868a] BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

ANSWER OF THE CITY OF JOHNSTOWN TO THE PETITION OF THE PEOPLES NATURAL GAS COMPANY FOR THE VACATION OF THE ORDER OF THE COMMISSION DATED SEPTEMBER 13, 1920, REQUIRING THE PEOPLES NATURAL GAS COMPANY AND THE JOHNSTOWN FUEL SUPPLY COMPANY TO CONTINUE THE PUBLIC SERVICE RENDERED BY EACH OF THEM IN THE SUPPLYING OF NATURAL GAS IN THE CITY OF JOHNSTOWN UNTIL THE FURTHER ORDER OF THE COMMISSION—Filed Sept. 26, 1921

To the Honorable the Public Service Commission of the Commonwealth of Pennsylvania:

The Answer of the City of Johnstown to the above mentioned petition respectfully represents:

1. The averments contained in the first paragraph of the petition are admitted.

2. The averments in the second paragraph of the petition are admitted, except that it is denied that the alleged tariff of rates entitled "Supplement No. 2 to P. S. C. Pa. No. 7 of the Tariffs of the Peoples Natural Gas Company" is a tariff of rates within the meaning of the Public Service Company Law.

3. The averments contained in the third paragraph of the petition are admitted.

4. The averments contained in the fourth paragraph of the petition are admitted.

[fol. 869a] 5. The averments contained in the fifth paragraph of the petition are admitted.

6. The averments contained in the sixth paragraph of the petition are denied as the same are therein stated.

It is admitted that the petitioner has attempted in the manner stated in said paragraph, to withdraw from the City of Johnstown; but respondent avers that the service now being rendered by petitioner at the City of Johnstown cannot be discontinued without the approval and consent of your Honorable Commission.

7. In reply to the averments contained in the seventh paragraph of the petition, this respondent states that it is not a party to, and has no definite knowledge of, the alleged controversy between petitioner and the Johnstown Fuel Supply Company, and further avers that the facts stated in the said seventh paragraph, even if true, do not constitute any reason for the vacation of the said order of September 13, 1920.

8. In reply to the averments and arguments contained in the eighth paragraph of the petition, this respondent states that the users of natural gas in the City of Johnstown have been paying for such gas the filed tariff rates and stand ready to pay such rates as your Honorable Commission may find to be just and reasonable for said gas, and that said users of natural gas have done nothing in any way affecting the constitutional rights of the petitioner.

9. In reply to the alternative prayer of the petitioner contained in the ninth paragraph of the petition, to the effect that the Commission fix a rate of 40 cents per 1,000 cubic feet of gas to be paid by the Johnstown Fuel Supply Company to the petitioner, this respondent avers that such rate would be unjust and unreasonable and [fol. 870a] would result in requiring the users of natural gas in the City of Johnstown to pay an unjust and unreasonable rate for such gas, but said users are ready and willing to pay such rates as your Honorable Commission may determine to be just and reasonable.

Wherefore Respondent showing that no reasonable ground exists for the vacation of said order of your Honorable Commission, dated September 13, 1920, prays that the said petition be forthwith dismissed.

City of Johnstown, by Tillman K. Saylor, J. E. B. Cunningham, Counsel.

BEFORE THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA

ANSWER OF JOHNSTOWN FUEL SUPPLY COMPANY TO THE PETITION OF PEOPLES NATURAL GAS COMPANY FOR THE VACATION OF THE ORDER OF THE COMMISSION, DATED SEPTEMBER 13, 1920, REQUIRING THE PEOPLES NATURAL GAS COMPANY TO CONTINUE THE SUPPLY OF NATURAL GAS TO THE JOHNSTOWN FUEL SUPPLY COMPANY.

To the Public Service Commission of the Commonwealth of Pennsylvania:

The answer of the Johnstown Fuel Supply Company to above named petition respectfully sets forth:

(1) The statement contained in paragraph "(1)" of said petition is admitted to be true.

(2) With respect to the statement contained in paragraph "(2)" [fol. 871a] of said petition it is admitted that Peoples Natural Gas Company filed the alleged tariff as therein set forth; the Johnstown Fuel Supply Company denies that such filing constitutes the filing of the tariff as provided by the Public Service Company Law.

(3) The statements contained in paragraph "(3)" of said petition are admitted to be true.

(4) The statements contained in paragraph "(4)" are admitted to be true.

(5) The statements contained in paragraph "(5)" are admitted to be true.

(6) With respect to the correctness of the statement contained in paragraph "(6)", Johnstown Fuel Supply Company has no knowledge except the statements furnished by the Peoples Natural Gas Company, and in this particular, Johnstown Fuel Supply Company respectfully states that any action taken by the Peoples Natural Gas Company, as alleged in said paragraph "(6)", is entirely without force or effect until or unless approved by your Honorable Commission, and further, that Your Honorable Commission has not approved the altering of the territory of the Peoples Natural Gas Company in the way and manner set forth in said paragraph "(6)" of said petition, nor has any application on behalf of the Peoples Natural Gas Company been filed, asking for such approval by your Honorable Commission.

(7) With respect to the statements contained in paragraph "(7)" and "(8)" of said petition, Johnstown Fuel Supply Company respectfully states that said statements and the matters and things therein alleged are frivolous and immaterial in the issues now pend- [fol. 872a] ing before the Public Service Commission of Pennsylvania, and are set forth in said petition for the sole purpose of confusing the real issues now pending before your Honorable Commission, and for these reasons, Johnstown Fuel Supply Company is advised by counsel that it is unnecessary to make any answer thereto.

(8) Johnstown Fuel Supply Company, however, does state that it stands ready and willing at all times to pay to the Peoples Natural Gas Company such an amount for the gas furnished by the said Peoples Natural Gas Company to said Johnstown Fuel Supply Company as said Peoples Natural Gas Company is entitled to under the law, and if said Peoples Natural Gas Company, has, by reason of its unlawful acts, deprived itself of the reasonable value for its gas, said Peoples Natural Gas Company has no one to blame for this situation but itself and its stubborn refusal to comply with the order of the Public Service Commission, made nearly four years ago, directing said Peoples Natural Gas Company to file its rates and tariff as required by law.

Johnstown Fuel Supply Company denies that any claim made by it will in any way deprive the said Peoples Natural Gas Company of any property without due process of law or in violation of the Constitution of the United States or the State of Pennsylvania.

Said Johnstown Fuel Supply Company further states that said Peoples Natural Gas Company has the right at any time to file its tariff of rates and charges for the service it furnishes to the Johnstown Fuel Supply Company and the citizens of Johnstown, and that the mere filing of such a tariff will protect any rights which the said Peoples Natural Gas Company may have, and will at the same [fol. 873a] time comply with the order of the Public Service Commission and the terms of the Public Service Company Law.

(9) With respect to the statements contained in paragraph "(9)" of said petition, Johnstown Fuel Supply Company respectfully states that the order therein requested by said Peoples Natural Gas Company would be unjust, unreasonable and contrary to the terms of the Public Service Company Law, and further, that until suit was begun by the said Peoples Natural Gas Company in the Cambria County Court no claim had ever been made by the said Peoples Natural Gas Company for a price of Forty (40¢) cents per thousand cubic feet from the first day of October, 1920.

That said Johnstown Fuel Supply Company had been advised of no increase in the price of natural gas by the said Peoples Natural Gas Company, nor had said Peoples Natural Gas Company made any increase in the price of natural gas furnished to the Johnstown Fuel Supply Company, as required by law or under the orders of the Public Service Commission, and, therefore Johnstown Fuel Supply Company has not up to the present time made any increase in the price of natural gas which it furnishes to its consumers in the City of Johnstown, and that, therefore, it would be unjust and unreasonable, and entirely inequitable for the Public Service Commission to enter any order fixing the price of natural gas already furnished by the said Peoples Natural Gas Company to the said Johnstown Fuel Supply Company in excess of Twenty-One (21¢) cents per thousand cubic feet, because the rate charged by the Johnstown Fuel Supply Company to the consumers of the City of Johnstown is [fol. 874a] based upon the said charge of Twenty-One (21¢) cents per thousand cubic feet, and the hearing and valuation of the Johns-

town Fuel Supply Company, almost completed by Your Honorable Commission, has assumed the payment of not more than Twenty-One (21¢) cents per thousand cubic feet to the Peoples Natural Gas Company by the Johnstown Fuel Supply Company.

(10) Johnstown Fuel Supply Company respectfully states that any order of the Public Service Commission requiring the Johnstown Fuel Supply Company to pay to the Peoples Natural Gas Company more than Twenty-one (21¢) cents per thousand cubic feet should be so made as to allow ample time for the said Johnstown Fuel Supply Company to in turn file a new tariff, increasing its rates in the same proportion that the Peoples Natural Gas Company charges for the gas so furnished.

(11) Johnstown Fuel Supply respectfully submits that it is entirely beyond the jurisdiction of The Public Service Commission to enter the order prayed for in paragraph "(9)" of said petition, and that it is entirely beyond the jurisdiction of The Public Service Commission to enter any order giving a retroactive effect to any rate or charge that may be fixed or determined by said Commission.

(12) Johnstown Fuel Supply Company further respectfully submits that there is not sufficient knowledge or information before Your Honorable Commission so as to enable you to enter any order fixing even a temporary rate that shall be charged by the Peoples Natural Gas Company for the gas furnished to the Johnstown Fuel Supply Company, and that, therefore Your Honorable Commission [fol. 875a] is entirely without jurisdiction to enter an order fixing a temporary rate of said Peoples Natural Gas Company, as prayed for in paragraph "(9)" of said petition.

In this regard Johnstown Fuel Supply Company respectfully submits that the Peoples Natural Gas Company are not entitled to be considered as an exception to the rules applicable to public service companies, and that said Peoples Natural Gas Company should not be considered in a class by itself, whereby it is entitled to wholly different consideration and treatment from other public service companies, and, therefore, said Peoples Natural Gas Company should be required to conform to the rules and regulations of Your Honorable Commission and the terms of the Public Service Company Law by filing in the manner directed by the said Public Service Company Law its tariff containing its rates, tolls and charges; said rates, tolls and charges, however, to be subject to complaint as to their reasonableness, the same as would be the case with any other public service company's tariff.

Under the terms of The Public Service Company Law and the rules of Your Honorable Commission, the said tariff when effective becomes the collectible rate of said Peoples Natural Gas Company, and because of this fact, the Peoples Natural Gas Company cannot complain that they are deprived of their property without due process of law.

Johnstown Fuel Supply Company does not make any objection to The Public Service Commission allowing such tariff when filed

by the said Peoples Natural Gas Company to become effective upon less than Thirty days' notice. Said Johnstown Fuel Supply Company reserves the right, however, to file any complaint it might deem [fol. 876a] advisable against said rates, and the burden of proof to remain upon said Peoples Natural Gas Company, as provided by law.

Wherefore, Johnstown Fuel Supply Company respectfully prays that said petition be dismissed for the reasons hereinabove set forth.

And it will ever pray, etc.

Johnstown Fuel Supply Company, by T. F. Hepburn.

Jurat showing the foregoing was duly sworn to by T. F. Hepburn; omitted in printing.

[fol. 877a] IN SUPERIOR COURT OF PENNSYLVANIA

No. 107, April Term, 1922

THE PEOPLES NATURAL GAS COMPANY, Appellant,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

APPEAL OF THE PEOPLES NATURAL GAS COMPANY FROM THE ORDER OF THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA ORDERING IT TO CONTINUE TO SUPPLY NATURAL GAS, AND SERVICE INCIDENT THERETO TO THE JOHNSTOWN FUEL SUPPLY COMPANY FOR DISTRIBUTION IN THE CITY OF JOHNSTOWN AND GRANTING IT PERMISSION TO FILE, POST AND PUBLISH A TARIFF SCHEDULE OF RATES FOR THE GAS AND SERVICE THUS SUPPLIED AND FURNISHED.

The Petition of the Peoples Natural Gas Company respectfully represents:

That one Louis Franke filed his complaint and supplemental complaint against the Johnstown Fuel Supply Company before the Public Service Commission of the Commonwealth of Pennsylvania, copies of which complaint and supplemental complaint accompany this petition and are marked Exhibits "A" and "B", respectively.

That at the request of said Commission, your petitioner intervened [fol. 878a] as respondent in said proceeding and filed its demurrer and answer and an amendment thereto to said complaint, copies of which demurrer and answer and amendment thereto accompany this petition and are marked Exhibits "C" and "D", respectively.

Your petitioner's demurrer was heard and passed upon by the Commission and an order filed by the Commission, dated the 4th day of December, 1917, wherein said demurrer was overruled and your petitioner ordered to file, post and publish its tariff and sched-

ıle of rates covering the service complained of. A copy of said rder, which was served by the Commission upon petitioner on the th day of December, 1917, accompanies this petition and is marked Exhibit "E".

An appeal was taken from said order of the Commission by your petitioner to the Superior Court of Pennsylvania, at No. 111 April Term, 1919, which Court entered an order dismissing the appeal and affirming the order of the Commission. A further appeal was taken rom said order of the Superior Court by your petitioner to the Supreme Court of Pennsylvania, at No. 20 October Term, 1919, which Court on June 26, 1920, entered an order dismissing the appeal as premature.

On or about July 25, 1919, your petitioner gave written notice o the Johnstown Fuel Supply Company of its election to terminate eliveries of natural gas to the Johnstown Fuel Supply Company n the first day of October, 1920, and on or about August 26, 1919, ave a like notice to the City of Johnstown, copies of which notices ccompany this petition and are marked Exhibits "F" and "G", respectively.

fol. 879a] On or about the 24th day of July, 1920, pursuant to the rder aforesaid of the Public Service Commission of Pennsylvania, our petitioner filed in the Bureau of Rates and Tariffs of said Commission a Tariff schedule of rates covering service rendered by it to ıe Johnstown Fuel Supply Company, entitled "Supplement No. 2 P. S. C. Pa. No. 7 of the tariffs of the Peoples Natural Gas Company," a copy of which tariff accompanies this petition and is marked xhibit "H."

On or about the 20th day of August, 1920, Joseph Cauffiel, successor of Louis Franke, Mayor of the City of Johnstown, Pa., filed an dditional complaint in the above entitled proceeding, complaining ıat the tariff and schedule filed by your petitioner was not a tariff ıd schedule within the meaning of the Public Service Company aw, and praying that same be stricken from the records of the Commission, and also complaining that, if a tariff or schedule of rates ıe same was unjust, unreasonable and unjustly discriminatory, a ppy of which complaint accompanies this petition and is marked xhibit "I."

On or about the 27th day of August, 1920, the above named Joseph auffiel, said Mayor, filed a petition in this case, praying that your etitioner and the Johnstown Fuel Supply Company be restrained om discontinuing the supply of natural gas in the City of Johnswn, a copy of which petition accompanies this petition and is arked Exhibit "J."

On or about the 13th day of September, 1920, the Commission ed an order, wherein it directed your petitioner and the Johnstown uel Supply Company to continue the public service rendered by ch of them in the supplying of natural gas in the City of Johns-
ol. 880a] town until December 1, 1920, and until the further order the Commission, a copy of which order accompanies this petition d is marked Exhibit "K."

Pursuant to Section 5 of the Natural Gas Company Act of May 29, 1885, P. L. 29, your petitioner altered its territory for the transportation and supply of natural gas by abandoning the pipe line through which it has been supplying gas to the Johnstown Fuel Supply Company, and filed its certificate of said abandonment in the office of the Secretary of the Commonwealth of Pennsylvania on Jonuary 27, 1921, and recorded same in the office of the Recorder of Deeds of Cambria County on January 29, 1921, a copy of which certificate accompanies this petition and is marked Exhibit "L."

On or about September 13, 1921, your petitioner, The Peoples Natural Gas Company, filed its petition with the Commission reciting the filing of its agreement with the Johnstown Fuel Supply Company with the Commission on July 24, 1920, together with the notice of cancellation, effective October 1, 1920, and the fact that since October 1, 1920, by the Commission's interlocutory order of September 13, 1920, your petitioner had been required to continue to supply gas to the Johnstown Fuel Supply Company and that the Commission had fixed no price or terms on which the gas should be so supplied on and after October 1, 1920; also setting forth the abandonment of its pipe line through which it was supplying gas to the Johnstown Fuel Supply Company, pursuant to Section 5 of the Natural Gas Company Act of May 29, 1885, and that such abandonment became effective January 29th, 1921, and praying that the Commission, in case it refused to dissolve and vacate said interlocutory order of September [fol. 881a] 13, 1920, make a further order for the payment of an adequate sum for natural gas delivered by your petitioner to the Johnstown Fuel Supply Company under said restraining order, on and after the first day of October, 1920, of not less than 40c. per thousand cubic feet, a copy of which petition accompanies this petition and is marked Exhibit "M."

On or about October 3, 1921, the Public Service Commission of Pennsylvania entered an order requiring your petitioner to continue its supply of natural gas and service incident thereto, to the Johnstown Fuel Supply Company, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission dated September 13, 1920, and granted your petitioner permission to file, post and publish according to law a tariff schedule of rates for the gas and service thus supplied and furnished. A copy of said order, which was served by the Commission upon petitioner on the 7th day of October, 1921, accompanies this petition and is marked Exhibit "N," and petitioner now desires to appeal from said order.

Now therefore, this 2nd day of November, 1921, the Peoples Natural Gas Company, the petitioner herein, appellant, presents this petition and appeals from the said order of the Commission and assigns error thereto as follows:

IN SUPERIOR COURT OF PENNSYLVANIA

ASSIGNMENTS OF ERROR

1. The Commission erred in making the following finding of fact and conclusion thereon:

"Prior to its having terminated its contract with the Johnstown [fol. 882a] Company and the filing and recording of the certificate altering its territory of supply, as above stated, this Commission held that it had jurisdiction to compel this company to file its tariff and schedule of rates covering its service in supplying natural gas to the Johnstown Fuel Supply Company for distribution to consumers in the City of Johnstown. This authority of the Commission, on appeal to the Superior Court, was upheld in an opinion by Judge Henderson, speaking for the court, to which nothing can be profitably added. Franke vs. Johnstown Fuel Supply Company, 70 Pa. Superior Court, 446. With this adjudication in favor of our jurisdiction, the question now for determination is, has that jurisdiction been ousted by the Peoples Company canceling its contract with the Johnstown Company and making, filing and recording of the certificate excluding the City of Johnstown from its territory of supply of natural gas, or by both or either of these acts?"

2. The Commission erred in making the following finding of fact and conclusion thereon:

"Inasmuch as the jurisdiction of the Commission was not acquired by virtue of the contract referred to, it cannot be defeated by the termination of that contract. The jurisdiction of the Commission was conferred by the statute creating and vesting in it authority to regulate the public service in which the Peoples Company is engaged, and the Company having undertaken, through the Johnstown Fuel Supply Company, to supply natural gas in the City of Johnstown, which was within its charter territory, that service ipso facto came [fol. 883a] under the regulatory authority of this Commission, and cannot now be abandoned in the manner attempted."

3. The Commission erred in making the following finding of fact:

"The Peoples Company was a controlling factor in procuring the consumers of gas in the City of Johnstown to use natural instead of manufactured gas, and thereby succeeded in causing the artificial gas plant theretofore existing in the City to be eliminated and dismantled."

4. The Commission erred in making the following finding of fact and conclusion thereon:

"In our opinion the execution, filing and recording of the certificate referred to, without the approval of this Commission, is as futile to defeat its jurisdiction as the cancellation of the contract under which the company engaged in the service which it now seeks to abandon."

5. The Commission erred in making the following finding of fact and conclusion thereon:

"If it be conceded that a natural gas company, prior to the passage of the Public Service Company Law, might at will so alter its

territory of supply under Section 5 of the Natural Gas Act of 1885 as to exclude certain consumers which it had theretofore undertaken to supply. Germania Refining Company vs. Allum Rock Gas Company, 226 Pa., 433, we take it that this section of that Act has been so far modified by the later Public Service Company Law that aban- [fol. 884a] donment of service in chartered and occupied territory, such as disclosed by the evidence in this case, is not now permissible without the sanction of this Commission."

6. The Commission erred in making the following finding of fact and conclusion thereon:

"It follows from what has been said that the jurisdiction of the Commission, as heretofore found by the Superior Court to exist, has not been in any wise affected by the steps since taken by the Peoples Company to oust it, and we accordingly so find and determine."

7. The Commission erred in making the following finding of fact and conclusion thereon:

"There is nothing in the record or evidence presented to justify a discontinuance of the supply of natural gas by the Peoples Company to the Johnstown Company for distribution in the City of Johnstown, and the Commission finds and determines that this supply shall be continued and that notwithstanding the termination by the Peoples Company of its contract with the Johnstown Company for such supply of gas, or the executing, filing and recording by the Peoples Company of the certificate excluding the City of Johnstown from its territory of supply."

8. The Commission erred in making the following finding of fact and conclusion thereon:

"The Commission has jurisdiction and authority to require the Peoples Natural Gas Company to continue this supply of natural [fol. 885a] gas as heretofore and to permit it to forthwith file, post and publish a tariff and schedule of rates for the gas and service thus supplied and furnished, and an order to that effect will accordingly be made."

9. The Commission erred in entering the following order:

"This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its finding of facts and conclusions thereon, which said report is hereby approved and made a part hereof;

Now, to wit, October 3, 1921, It is ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply

natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished." [fol. 886a] (The particular part of said order to which this assignment is directed is as follows:

"Now, to wit, October 3, 1921. It is ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920."

10. The Commission erred in entering the following order:

"This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of facts and conclusions thereon, which said report is hereby approved and made a part hereof;

Now, to wit, October 3, 1921. It is ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.

[fol. 887a] Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished."

(The particular part of said order to which this assignment is directed is as follows:

"Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.")

11. The Commission erred in entering the following order:

"This matter being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof;

Now, to-wit, October 3, 1921. It is ordered that the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, *the* the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of The Public Service Commission dated September 13, 1920.

[fol. 888a] Permission is hereby granted the Peoples Natural Gas Company, respondent, to file post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished."

and in thereby making permanent its interlocutory order of September 13, 1920, viz:

"Now, to-wit, September 13, 1920, it is ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, parties respondent, be and they are hereby severally required and directed to continue the public service rendered by each of them in supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission."

and compelling your petitioner to continue to supply gas to the Johnstown Fuel Supply Company on and after October 1, 1920, on which date the contract between your petitioner and the Johnstown Fuel Supply Company was terminated by notice of cancellation given in accordance with its terms and as above shown, without fixing the rate or price at which the service was to be rendered or gas furnished from and after October 1, 1920, and as prayed by your petitioner in its petition filed as above shown.

12. The Commission erred in not finding that the contract or agreement between your petitioner and the Johnstown Fuel Supply Company was cancelled and terminated October 1, 1920, and in not entering a final order dissolving its interlocutory restraining order entered September 13, 1920, and dismissing the petition dated August 27th, 1920, as to your petitioner.

[fol. 889a] 13. The Commission erred in not finding that petitioner was under no public service duty or other duty to supply gas to the Johnstown Fuel Supply Company or its customers or consumers on and after October 1, 1920, and in not dismissing petition dated August 27th, 1920, as to your petitioner.

14. The Commission erred in not finding that your petitioner was engaged in interstate commerce and that the larger part of the gas being delivered by it to the Johnstown Fuel Supply Company was being transported in interstate commerce and that it was without jurisdiction to compel your petitioner to continue to sell or deliver gas transported in interstate commerce to the Johnstown Fuel Supply Company or to fix the price or rate at which the gas should be so supplied and in not dismissing the petition dated August 27, 1920.

15. The Commission erred in not including in its final order of October 3, 1921, from which this appeal is taken, a provision fixing

the rate or price which the Johnstown Fuel Supply Company should pay your petitioner for gas delivered on and after October 1, 1920.

16. The Commission erred in not dismissing the original complaint, dated September 13, 1916, and the supplemental complaint, dated September 24, 1917, as to the Peoples Natural Gas Company.

17. The Commission erred in not dismissing the complaint dated August 20, 1920, as to the Peoples Natural Gas Company.

[fols. 890a-1001a] 18. The Commission erred in not dismissing the petition dated August 27, 1920, as to the Peoples Natural Gas Company.

Wherefore, your petitioner prays your Honorable Court to take such action and to proceed to such a determination thereof as is provided by law and consistent with the record thereof.

And it will ever pray, etc.

The Peoples Natural Gas Company, by J. B. Tonkin, Vice President. Arthur E. Young, Gordon & Smith, Attorneys for Appellant.

[fol. 1002a] EXHIBIT No. "J-1"

Special ordinance No. 706 of city of Johnstown granting unto United Fuel Gas Company the right to lay pipe line in streets and supply natural gas for fuel and lighting purposes and acceptance by United Fuel Gas Co. of said ordinance—Filed September 20, 1917.

Councils of City of Johnstown

Special Ordinance No. 706. Select Bill No. 677

An ordinance granting unto the United Fuel Gas Company, a corporation, its successors and assigns, the right to lay, operate, and maintain lines of pipe in the streets and highways of the city of Johnstown, Cambria County, State of Pennsylvania, for the purpose of supplying natural gas for fuel and lighting purposes to the public and providing the terms and conditions under which the said privileges shall be exercised.

Section 1. Be it enacted and ordained by the Select and Common Councils of the City of Johnstown, and it is hereby enacted and ordained by the authority of the same:

[fol. 1003a] That the right and privilege be and the same is hereby granted unto the United Fuel Gas Company, a corporation, its successors and assigns, to lay, operate, and maintain lines of pipe in the streets, alleys and highways of the City of Johnstown, for the purpose of supplying natural gas for fuel and lighting purposes to the public, for the term of thirty years beginning at the date of the acceptance of this ordinance by the said company, and ending thirty years thereafter; upon the following conditions and restrictions.

Section 2. The said lines of pipe and connections thereto shall be laid, maintained, and changed under the direction of the City Engineer, and laid, maintained, changed and operated in conformity with the ordinances of the City of Johnstown, now in existence or that may hereafter be enacted; and so as not to conflict with the rights and privileges now or hereafter possessed by the said city and its successors, and to comply with any future change or changes in the grades of streets or highways or in the installment of sewers or other necessary changes caused by the future growth of the said City; and the laying, operating, repairing and changing of the said lines of pipe or parts thereof or connections thereto, now and hereafter, shall be done at the expense of the said company, without recourse to the said city.

Section 3. Sewers, either public or private, as well as all pipes, mains and conduits already laid in the streets, alleys and lanes of the City of Johnstown shall not in any manner be interfered with and all rights and privileges herein granted shall be subject to the rights and privileges heretofore granted for the use and enjoyment of said [fol. 1004a] highways. None of the pipes, connections or appliances of the United Fuel Gas Company, its successors and assigns, shall be laid over any sewer or sewers now laid, excepting when necessary to cross the same; and should it subsequently be found necessary to change the location of pipes, connections, appliances, or any part thereof, for the purpose of laying a public sewer or sewers, such changes shall be made immediately by the said United Fuel Gas Company, its successors and assigns, upon notice in writing by the City Engineer, at the expense of the said company as aforesaid.

Section 4. The United Fuel Gas Company, its successors and assigns, shall in all instances comply with the ordinances now in force or that may hereafter be enacted by the said City of Johnston, or its successors, regulating and governing the opening and excavating or otherwise disturbing the highways of the said City, and shall from time to time file with the City Engineer a map of its pipe lines and extensions.

Section 5. The said United Fuel Gas Company, its successors and assigns, shall maintain and operate its system for supplying natural gas in the said City so as at all times and in all seasons to furnish and maintain a general gas pressure of not less than four nor more than twelve ounces per square inch of pressure at the point of consumption in and upon its whole system of supply pipes throughout the said City, as laid at any time, as shall be determined by accurate recording gauges set up and connected with the said company's supply system, at such points on said system as shall be designated by the City Engineer and approved by the Joint Highways Committee [fol. 1005a] of the said City, said gauges to be under the supervision and exclusive control of said City Engineer; and gas so supplied shall be of a quality generating not less than Nine Hundred British thermal units per cubic foot as determined by standard Calorimeter upon tests to be made by the City Engineer from time to time as the

Mayor of the said City shall direct; and the records of pressure and tests of quality made and taken as aforesaid shall be filed in the office of the City Engineer and there remain; and upon failure of said United Fuel Gas Company, its successors and assigns, to furnish and supply natural gas at the minimum pressure or of a minimum thermal quality, above specified during any day for five days, consecutive or otherwise, in any period of thirty days then and in such event and upon such failure and default being certified in writing by the City Engineer to the Mayor of said City, and notice thereof given to the company, the said United Fuel Gas Company, its successors and assigns, shall pay a penalty in the nature of liquidated damages to the said City, the sum of One Hundred Dollars per day until the above specified minimum pressure or minimum thermal quality shall be restored.

Section 6. The mains and supply pipes of the said company, its successors and assigns, their connections, valves and appliances generally for distribution of natural gas within the said City shall be provided with suitable appliances so as to prevent or take up all leakage that may occur therein detrimental or dangerous to life, property or vegetation. It being expressly understood that the said City of Johnstown, or its successors, shall not be liable for any damages incurred by reason of any of the rights and privileges granted under this ordinance during the term for which the said ordinance is [fol. 1006a] granted nor for any damages occasioned by the negligence of the said company, its successors and assigns, or its employees or agents, in laying, operating, or maintaining its mains or supply pipes nor for the removal of the same as hereinafter provided; and the supervision of the City Engineer shall not release the said company, its successors or assigns, employees or agents, from the consequences of such negligence.

Section 7. All the main pipes before being put into service shall be carefully tested with an air pressure of fifty pounds to the square inch and shall be made air tight before being covered.

Section 8. The privileges herein granted are conditioned that the said United Fuel Gas Company, its successors and assigns, shall furnish natural gas ready for use within the City on or before October 7, 1907; and shall also furnish and supply natural gas to every part of the City and to any ten property owners, within 2,500 feet of the line or lines of the same, making application for the supply of the same at any place within the City limits, when such application shall have been approved by the Joint Highway Committee of Councils and the City Engineer; and upon failure of the said United Fuel Gas Company, its successors and assigns, to furnish and supply natural gas to every portion of the City, upon notice in writing of the approval of the said Joint Highway Committee and the City Engineer as aforesaid, then this ordinance shall ipso facto become null and void and all the rights and privileges thereunder shall immediately cease and determine.

Section 9. The charge for natural gas, supplied as aforesaid by [fol. 1007a] the United Fuel Gas Company, its successors and assigns, during the continuance of this franchise, shall not exceed thirty-five cents per thousand cubic feet; and the said United Fuel Gas Company, its successors and assigns, shall make no charge directly or indirectly to its consumers within the said City, for meters or for the installing of meters; and upon breach of any of which conditions this ordinance shall ipso facto become null and void and all the rights and privileges thereunder immediately cease and determine and the mains, pipes, connections, appliances and property generally of the said United Fuel Gas Company, its successors and assigns, in the streets, alleys and highways of the said City shall become the property of the said City or its successors.

Section 10. Should the United Fuel Gas Company, its successors and assigns, for the entire term of this grant, comply with the provisions thereof and should there not be any extension of the within term, then at the time of such expiration three arbitrators shall be appointed, one by the City or its successors, one by the United Fuel Gas Company, its successors and assigns, and they two shall appoint a third, who shall make inventory and appraise and value the mains, pipes, connections, appliances and property of the said company, its successors and assigns, within the City limits, and having so inventoried, appraised and valued the same, the said City of Johnstown, and its successors, shall pay to the said United Fuel Gas Company, its successors and assigns, the amount of such valuation, and shall thereupon acquire absolute title to the aforesaid property. Provided, the said City shall have the option within thirty days from [fol. 1008a] the finding of said arbitrators to accept or refuse the property at the valuation as aforesaid. In the event of the refusal on the part of the said City or its successors to elect to accept the said option, then the said United Fuel Gas Company, its successors and assigns, shall give bond, with sufficient surety or sureties to the said City, or its successors, in the sum of Twenty Thousand Dollars, lawful money of the United States, conditioned that the said United Fuel Gas Company, its successors and assigns, will remove the said mains, pipes and appliances within the term of one year from the date of the refusal in writing of the said City to accept the aforesaid option; and that it will restore the streets, alleys and highways of the said City to the condition they were in immediately before such removal, and upon failure to so do (of which failure the City Engineer and Joint Highway Committee shall be the sole judges) the said bond shall be forfeited to the said City, and should the said United Fuel Gas Company, its successors and assigns, upon the refusal of the said City to accept the within option, not give bond for the removal of its mains, pipes, connections and appliances as aforesaid, within three years from such refusal of the said City to accept the option, then the mains, pipes, connections, appliances, and property of the said United Fuel Gas Company, its successors and assigns, in the said City shall be forfeited to the said City absolutely.

Section 11. Concurrently with the written acceptance of this ordinance as hereinafter provided, the said United Fuel Gas Company, its successors and assigns, shall pay unto the City of Johnstown by a properly certified check, the sum of Ten Thousand Dollars and it is further hereby provided that the said United [fol. 1009a] Fuel Gas Company, its successors and assigns, shall pay to the said City of Johnstown, or its successors, the additional sum of One Thousand Dollars, lawful money, on the first day of May, 1907, and the sum of One Thousand Dollars, annually thereafter on the first day of May in each and every succeeding year during the continuance of this ordinance. And upon default of any of the said annual payments or part thereof for ninety days after the same shall be due, then this ordinance shall become null and void.

Section 12. This ordinance furthermore shall be null and void unless the United Fuel Gas Company, its successors and assigns, shall file with the City Clerk of the City of Johnstown within thirty days after approval thereof its written absolute acceptance thereof; said acceptance to be by the Board of Directors thereof at a meeting, legally called for such purpose; the action of said Board to be certificated by the Secretary of said corporation under its corporate seal and accompanied by a certified check of Ten Thousand Dollars to the City of Johnstown.

Passed finally in Council March 23, 1906.

Approved March 26, 1906.

(Signed) Charles Young, Mayor.

I hereby certify that the above and foregoing is a true copy of Special Ordinance No. 706 of the City of Johnstown, Pennsylvania.

Jno. W. Cramer, City Clerk. (Seal.) Sept. 6, 1916.

[fol. 1010a] Acceptance by the United Fuel Gas Company of an Ordinance of the City of Johnstown, Pennsylvania

The United Fuel Gas Company, a corporation duly organized under the laws of the State of West Virginia, and also duly registered in the office of the Secretary of the Commonwealth for the State of Pennsylvania, hereby accepts for itself, its successors and assigns, the provisions of Special Ordinance No. 706, granting unto The United Fuel Gas Company, its successors and assigns, the right to lay, operate and maintain lines of pipe in the streets and highways of the City of Johnstown, County of Cambria, State of Pennsylvania, for the purpose of supplying natural gas for fuel and lighting purposes to the public; and providing the terms and conditions under which the said privilege shall be exercised; passed by the Council of the City of Johnstown, March 23rd, 1906, and approved by the Mayor of said City, March 26, 1906, and in consideration of the franchise, rights and privileges, granted by said ordinance to said company, its successors and assigns, to do and perform fully, faithfully and promptly each and all the things which said ordi-

nance provides shall be done by said company, its successors and assigns, and to comply faithfully with each and every provision of said ordinance.

In Witness Whereof, the said United Fuel Gas Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by Geo. W. Crawford, its President, and H. C. Reeser, its Secretary, (thereunto duly authorized by resolu- [fol. 1011a] tion of its Board of Directors) this 23rd day of April, A. D. 1906.

The United Fuel Gas Company, by Geo. W. Crawford, President.

Attest: H. C. Reeser, Secretary.

Resolved, that the United Fuel Gas Company accepts for itself, its successors and assigns, the provisions of an Ordinance—No. 706 passed by the Council of the City of Johnstown, County of Cambria, State of Pennsylvania, and that the President and Secretary be, and they are hereby authorized and directed to execute and file with the Clerk of said City a written acceptance of said ordinance (in the name and under the corporate seal of the Company as follows:)

Acceptance by the United Fuel Gas Company of an Ordinance Passed by the City of Johnstown, Pennsylvania

The United Fuel Gas Company, a corporation duly organized under the laws of the State of West Virginia and also duly registered in the office of the Secretary of the Commonwealth for the State of Pennsylvania, hereby accepts for itself, its successors and assigns, the provisions of an Ordinance No. 706 granting unto the United Fuel Gas Company its successors and assigns, the right to lay, operate and [fol. 1012a] maintain lines of pipe in the streets and highways of the City of Johnstown, Cambria County, Pennsylvania, for the purpose of supplying natural gas for fuel and lighting purposes to the public, and providing the terms and conditions under which the said privilege shall be exercised; passed by the Council of the City of Johnstown, March 23rd, and approved by the Mayor of said City, March 26th, 1906, and in consideration of the franchise, rights and privileges granted by said ordinance to said Company, its successors and assigns, to do and perform fully, faithfully and promptly, each and all things which said ordinance provides shall be done by said Company, its successors and assigns, and to comply faithfully with each and every provision of said ordinance.

Be It Further Resolved, That the Secretary furnish the Clerk of said City a copy of this resolution verified by affidavit.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

H. C. Reeser, being duly sworn, says that he is the duly elected, qualified and acting Secretary of the United Fuel Gas Company, a corporation duly organized under the laws of the State of West

Virginia, and also duly registered in the office of the Secretary of the Commonwealth for the State of Pennsylvania, and that the above and foregoing is a true and correct copy of a resolution duly and regularly adopted by the Board of Directors of said Company at a special meeting duly and regularly called and held by the said Board on the 23rd day of April, A. D. 1906, as the same appears of [fol. 1013a] record in the minutes made and kept by the affiant at the proceedings of said Board in Volume No. 1, page 46.

H. C. Reeser.

Subscribed and sworn before me this 23rd day of April, 1906. Walter W. Rathbun, Notary Public in and for Allegheny County, Pennsylvania. My commission expires Feb. 14th, 1910. (Seal.)

I do hereby certify that the above and foregoing is a true copy of an Acceptance on file in the Office of the City Clerk.

Jno. W. Cramer, City Clerk, Johnstown, Pa. (Seal.)

[fol. 1014a] EXHIBIT No. "J-2"

APPLICATION FOR CHARTER OF PEOPLES NATURAL GAS COMPANY AND CERTIFICATE OF INCORPORATION—Filed September 21, 1917

Office of the Secretary of the Commonwealth, Pennsylvania

To His Excellency Robert E. Pattison.

SIR: In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of natural gas companies," approved the 29th day of May, A. D. 1885; the undersigned of whom are citizens of Pennsylvania, having associated themselves together for the purpose of producing, dealing in, transporting, storing and supplying natural gas, and desiring that they may be incorporated, and that letters patent may be issued to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is The Peoples Natural Gas Company.

2nd. Said corporation is formed for the purpose of producing, dealing in, transporting, storing and supplying natural gas.

3rd. The place or places where natural gas is intended to be mined for and produced or received, are the Townships of Versailles and [fol. 1015a] North Versailles, in the County of Allegheny, the Townships of Washington, Franklin, Penn, Salem, Bell and North Huntingdon in the County of Westmoreland and the Townships of Franklin, Canton, Chartiers, North Strabane, South Strabane, Peters, Snowden, Nottingham, Cecil and Pleasant in the County of Washington.

4th. The place or places where it is to be supplied to consumers, are the Cities of Pittsburgh and Allegheny, in the County of Allegheny.

5th. The general route of its pipe line or lines and branches is, Beginning in Franklin Township in the County of Westmoreland aforesaid, near the northern line of said township, thence extending through said Township of Franklin and the Townships of Patton, Williams and Penn in the County of Allegheny, into the City of Pittsburgh, and thence across the Allegheny River into the City of Allegheny with branches extending from the Township of Franklin aforesaid into the above named townships in the County of Westmoreland and branches from said Versailles and North Versailles Townships in the County of Allegheny to connect with the main line and with another branch extending from the City of Pittsburgh in a southwesterly direction through the Townships of St. Clair, Baldwin and Snowden in the County of Allegheny into the aforesaid Townships in the County of Washington.

6th. The general office of said corporation is to be located in the City of Pittsburgh in the County of Allegheny.

7th. Said corporation is to exist for the term of one hundred years.

[fol. 1016a] 8th. The names and residences of the subscribers and the number of shares subscribed by each are as follows:

Name	Residence	No. of shares
Edward O. Emerson,	Titusville, Pa.	1,970
Joseph N. Pew,	Pittsburgh, Pa.	1,950
Theodore Johnson,	Pittsburgh, Pa.	20
Robert C. Pew,	Pittsburgh, Pa.	20
J. F. Robinson,	Allegheny, Pa.	20
R. S. Duffield,	Pittsburgh, Pa.	20

9th. The number of Directors of said corporation is fixed at five and the names and residences of the directors who are chosen directors for the first year are as follows:

Name	Residence
Edward O. Emerson	Titusville, Pa.
Joseph N. Pew	Pittsburgh, Pa.
Robert C. Pew	Pittsburgh, Pa.
J. F. Robinson	Allegheny, Pa.
R. S. Duffield	Pittsburgh, Pa.

10th. The amount of the Capital Stock of said Corporation is $200,000, divided into 4,000 shares of the par value of $50, and $20,000, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said corporation, whose name and residence are: Theodore Johnston, Pittsburgh, Pa.

Edward O. Emerson. (Seal.) Joseph N. Pew. (Seal.)
Theodore Johnson. (Seal.) Robert C. Pew. (Seal.)
J. F. Robinson. (Seal.) R. S. Duffield. (Seal.)

[fol. 1017a] STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the Recorder of Deeds, in and for the county aforesaid, personally came the above named Joseph N. Pew, Robert C. Pew, Theodore Johnson and J. F. Robinson, who, in due form of law, acknowledge the foregoing instrument to be their act and deed for the purposes therein specified:

Witness my Hand and Seal of office, the 25th day of June, A. D. 1915.

Wm. H. Graham, Recorder. (Seal.)

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Personally appeared before me, this 25th day of June, A D. 1915, Joseph N. Pew, Theodore Johnson and J. F. Robinson and Robert C. Pew, who, being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Joseph N. Pew, Theodore Johnson, J. F. Robinson, Robt. C. Pew.

Sworn and subscribed before me, this 25th day of June, A. D. 1885. Wm. H. Graham, Recorder. (Seal.)

Executive Chamber,
Harrisburg, June 26th, 1885.

Honor. Wm. S. Stenger, Secretary of the Commonwealth:

[fols. 1018a–1020a] Having examined the within application and found it to be in proper form, and within the purpose provided for in the act, entitled "An act to provide for the incorporation and regulation of Natural Gas Companies," approved May 29, A. D. 1885, I hereby approve the same, and direct that Letters Patent issue according to law.

Robt. E. Pattison, Governor.

PENNSYLVANIA, ss:

Secretary's Office

Enrolled in Natural Gas Charter Book, No. 1, Page 1.

Witness my hand and seal of office, at Harrisburg, this 26th day of June, A. D. 1885.

Jas. C. Shoemaker, Deputy Secretary of the Commonwealth. (Seal.)

PENNSYLVANIA, ss:

Robt. E. Pattison. (Seal.)

[fol. 1021a] EXHIBIT No. "J-3"

Agreement Between Peoples Natural Gas Co. and Johnstown Fuel Supply Co., Dated August 12, 1909

This agreement, entered into this 12th day of August, One thousand nine hundred and nine, by and between The Peoples Natural Gas Company, a Pennsylvania Corporation (hereinafter termed the Seller), and Johnstown Fuel Supply Company, also a Pennsylvania Corporation (hereinafter termed the Buyer), Witnesseth:

[fol. 1022a] Whereas the Seller entered into an agreement having date the 31st day of December, 1905, with George W. Crawford, and Carrol E. Crawford of Emlenton, Pennsylvania, M. C. Treat and John W. Donnan, of Washington, Pennsylvania, contracting for themselves and a corporation to be then organized under the name of Johnstown Fuel Supply Company for the transportation of natural gas and the distribution and sale of natural gas in and throughout the city of Johnstown, Pennsylvania, and in and throughout all boroughs, villages and places in the immediate vicinity of Johnstown, and

Whereas said contract was subsequently ratified by Johnstown Fuel Supply Company, the Buyer aforesaid, after its incorporation, and was subsequently modified by written agreement between the parties hereto, dated the 2nd day of December, 1908, and

Whereas the Buyer has entered into a contract or contracts of consolidation with the Citizens Light, Heat and Power Company, incorporated for the purpose of, and now supplying artificial gas and electric light and power in the said city of Johnstown, and now desires a new contract upon certain terms and conditions hereinafter stated.

Now, Therefore, this agreement witnesseth, that for and in consideration of the premises, and of the covenants and conditions of this agreement to be paid, kept and performed by the Buyer and by the consolidated corporation into which it is to be merged, the said Seller and Buyer do hereby covenant and agree as follows:

All other previous contracts and agreements between the parties [fol. 1023a] hereto are declared null and void and are hereby canceled.

(1) The Seller during the continuance of this contract will reserve the capacity of its pipe line or lines for the transportation and delivery (at a pressure at point of delivery of not less than two (2) pounds) of natural gas to the Buyer to the extent necessary to transport the amounts which the Buyer is obligated to take hereunder for supplying its consumers paying domestic rates, and the Seller will sell and deliver to the Buyer at the prices hereinafter stated, all the natural gas transported through said pipe line or lines for use in Johnstown, and immediately adjoining towns as herein provided.

The gas to be supplied by the Seller shall be delivered at its present point of connection between the pipe line of the Seller and

the distributing system of the Buyer, or at such other points of connection as may mutually be agreed upon. The pressure of the gas to be delivered by the Seller shall not at any time during the continuance of this contract, be less than two (2) pounds at the point of delivery or connection, even though the reducing valves at such point are opened to their fullest extent, and the Seller agrees at all times and continuously to maintain such minimum pressure of two (2) pounds, except as herein provided. The pressure shall be measured by a recording pressure gauge of the best commercial type, which shall be open to inspection and examination by both parties.

(2) The Seller will, during the continuance of this contract, sell and deliver at the prices hereinafter stated to the Buyer natural gas at the pressure aforesaid to the extent necessary to supply the [fol. 1024a] consumers of the Buyer paying domestic rates, up to the capacity of the existing twelve (12) inch line Derry to Johnstown, unless the Seller shall have given to the Buyer not less than twelve (12) months' written notice that on and after the date specified in such notice it will not furnish or deliver any more natural gas or that it will not furnish or deliver more natural gas per day than the amount specified in said notice. The Seller shall not be entitled to give any such notice until after the expiration of six (6) years from the date hereof.

(3) The Seller shall have the right by giving such written notice at any time after the expiration of six (6) years from the date hereof to entirely discontinue the delivery of natural gas or to limit the amount of natural gas which it can be required to furnish and deliver to the amount specified in such notice, and thereafter from time to time to further limit the amount which it may be required to furnish and deliver hereunder by further written twelve months' notice or notices or to entirely discontinue such delivery by such notice to that effect, which shall have the effect of terminating this contract except with regard to the obligations of the Seller under Paragraph 23 with regard to keeping all natural gas produced, transported or delivered by it from use, consumption or sale in the said territory.

(4) The Seller after having reduced by such notice or notices the amount of natural gas which it can be required to furnish and deliver, cannot thereafter, without the written consent of the Buyer, increase the amount which the Buyer is required to purchase and take above the amount stated in any such notice. The Buyer at any time when any such notice is in force, shall be free to purchase [fol. 1025a] from any available source any natural gas which it may require, over and above the amount specified in such notice, in order to insure its ability to satisfy the requirements of all of its consumers.

(5) The Buyer will during the continuance of this contract, purchase and take from the Seller all the natural gas required to sup-

ply its consumers paying domestic rates up to the capacity of the existing twelve (12) inch pipe line, Derry to Johnstown, except as herein provided.

(6) The Seller shall not be responsible for any failure of gas or diminution of pressure growing out of failure of gas wells or field, breakage or accident to lines or equipment, or any other causes beyond its control, nor for any temporary cut off of gas or diminution of pressure for the purpose of making necessary changes or repairs to its lines or equipment. In case of such temporary failure, or shut off, the Seller shall give to the Buyer prompt notice thereof and shall exercise due diligence to put its system again in condition to supply gas hereunder.

For a period of seven (7) years from the date hereof the fact that the Seller may be delivering or may be bound to deliver natural gas to other purchasers shall not under any circumstances be deemed a cause beyond its control excusing it from delivering to the Buyer continuously the supply herein contracted for at not less than the minimum pressure specified.

(7) Nor shall the Seller be responsible for any pipes or appliances of the Buyer, and shall not be held liable for any damage or loss (except those resulting solely from its negligence) to the employees or property of the Buyer, or to the persons or property of others [fol. 1026a] resulting from explosion or fire or from the use of natural gas in any part or parts of the plant or plants of the Buyer.

(8) The Seller agress with the Buyer that special contracts for the sale of natural gas may be made at prices to be mutually agreed upon by the parties to this agreement, such special contracts to be made in triplicate, one copy to be furnished to the Seller, and not to be operative without the written consent of the Seller; such gas to be shut off when needed for domestic consumption.

(9) The Buyer will at all times during the continuance of this contract actively and diligently use its best efforts for the information of the people in its territory concerning the uses of natural gas, and for forwarding and pushing the use by the public of all appliances connected therewith, and will make such solicitations and demonstrations as are reasonable and customary to induce the greater consumption of natural gas, and will introduce and furnish such appliances for its use on reasonable terms, and will at all times during the continuance of this contract use its best endeavors to secure customers and consumers, and to build up and extend the sale of natural gas, and will exert its best efforts to improve and maintain, enlarge and conduct the business of furnishing natural gas to the consumers within the territory covered by this agreement; and the Buyer further agrees, that with regard to such sections of its artificial gas system as would if tied into and made part of its system now distributing natural gas enable it to quickly, naturally and readily increase the number of domestic consumers using natural gas to at least seventy-five hundred (7500), it will, so far as the [fol. 1027a] same may be lawful a[illegible]ical, disconnect the same

from its artificial system and tie such sections into and make them part of its natural gas distributing system; and the Buyer further agrees that wherever a sufficient number of its consumers in districts where its artificial gas system is located, may desire its distributing system thereof to be made part of the natural gas distributing system, the Buyer, if it be possible for it from a business and legal standpoint so to do, will forthwith disconnect such districts from such artifical gas system and make them part of its natural gas system. Nothing in this paragraph (9) contained shall bind the Buyer to make any change of any part of its artificial gas system into a part of its natural gas system, if such change exposes the Buyer to any legal liability or forfeiture. The provisions of this paragraph (9) as to the extensions of the natural gas distributing system of the Buyer shall apply or be effective only so long as the Seller is supplying the entire requirements of the Buyer; and if and so long as the Seller is not supplying the amount required for the domestic consumers of the Buyer, the Buyer may discontinue or disconnect such a proportionate part of its natural gas system as is not needed to fully and adequately distribute the amount of natural gas which the Buyer is obligated to take and which the Seller is actually supplying. Nothing in this agreement shall be construed to prevent the Buyer from maintaining and operating its artificial gas system at all times during the life of this contract to the extent that may be necessary to protect the artificial gas franchise or franchises.

(10) The Buyer agrees to pay to the Seller on the execution of this contract the sum of Twenty Thousand Dollars ($20,000) in [fol. 1028a] cash, in lieu of amounts due under agreements or contracts superseded or cancelled by this writing.

(11) The price at which natural gas is now sold to domestic consumers is thirty (30) cents net per thousand cubic feet; the Seller consents that this price may be increased to not more than thirty-five (35) cents per thousand cubic feet, on and after December 31st, 1911, but the price shall not be increased beyond this rate without the Seller's written consent, nor shall the Buyer fix a price to domestic consumers at any time during the continuance of this contract after December 31, 1911, which shall net to the Seller less than twenty-four and a half (2½) cents per thousand cubic feet for gas sold for domestic consumption.

(12) The Buyer agrees with the Seller that it will keep proper books upon which shall be kept a true record of all sales of all kinds of gas as registered by the Buyer's meters, and the moneys received from such sales; and further, that it will on or before the 20th day of each and every month make and render to the Seller a true and correct statement showing its total sales of all kinds of gas, and the gross receipts therefrom during the last preceding month, and such other data with regard to its production and sale of gas and realization therefrom as the Seller may reasonably require. The Buyer agrees to pay to the Seller at its office in Pittsburgh, Pennsylvania,

on or before the 20th day of each and every month during the continuance of this contract until January 12th, 1912, inclusive, an amount equal to seventy (70) per cent of its gross actual receipts from the sales of natural gas to consumers paying domestic rates during the calendar month next preceding, and on the 20th day of [fol. 1029a] ech, and every month from January, 1912, to August, 1939, inclusive, to pay to the Seller an amount equal to seventy-five (75) per cent of its gross actual receipts from the sales of natural gas to consumers during the calendar month next preceding, provided however, that if and so long as the Buyer is fully supplying all the requirements of seventy-five hundred (7,500) domestic consumers with natural gas for light, heat or fuel, the Buyer shall be obligated to pay to the Seller only seventy (70) per cent. of its gross receipts from the sale of natural gas to consumers paying domestic rates during the calendar month next preceding.

(13) The Buyer further agrees that it will pay to the Seller on or before the 20th day of each and every month during the continuance of this contract, a sum equal to seventy-five (75) per cent. of the actual gross receipts from the sale of natural gas during the preceding calendar month at special rates as agreed upon between the parties hereto. The Buyer shall also make payment to the Seller for any gas unaccounted for above four (4) per cent of the gross volume of natural gas handled. The price to be paid for such unaccounted for gas in excess of said four (4) per cent. shall be the average price for gas furnished by the Seller to the Buyer during such month.

(14) The term "consumers paying domestic rates" as in this contract employed, includes all consumers purchasing gas from the Buyer, except such consumers as the Seller may agree may be contracted with at or upon special rates, terms and conditions.

(15) Domestic meters shall be read once in each month. Meters [fol. 1030a] measuring gas sold at special rates shall be read daily. The pressure in the distributing system of the Buyer shall not exceed eight (8) ounces at any point, nor shall any gas be sold or delivered from said system at a pressure to exceed (8) ounces.

(16) The Buyer shall have the right to raise the price of natural gas sold by it to consumers paying domestic rates, if the Seller by written notice, or notices, cuts down the supply of natural gas, provided that such increase in price does not reduce the consumption of natural gas below the amount which the Seller has specified in his last previous notice under paragraph 3 hereof.

(17) The Buyer agrees that it will at all times maintain and operate its distributing system and appliances in the most efficient manner possible and to the best of its ability to prevent leakage, waste or escape of gas. The Seller at its option, may install and operate a Pitot Tube station for the purpose of testing the Buyer's distributing system, and should the leakage or unaccounted for gas exceed four (4) per cent. of the gross volume of the natural gas

handled by the Buyer, the Seller may measure and charge the Buyer for such excess over four (4) per cent, as provided in Paragraph 13 hereof.

(18) The Buyer agrees that it will extend its distributing system, whenever and wherever it is possible to secure one responsible and permanent consumer for each one hundred (100) feet of extension; that it will not push the sale of artificial gas or electricity so as to hamper or interfere with the free sale of natural gas for any and all purposes; that connections from curb to meter shall be made and meter set free of cost to the consumer of natural gas; that its books, [fol. 1031a] accounts, meters and appliances so far as the same relate to or exhibit the records of the production, distribution and sale of gas and the realization of proceeds thereof shall be open at all reasonable times to the inspection of the Seller.

(19) In case the Buyer shall fail for two successive months to deliver to the Seller the statements required by Paragraph (2) hereof, or in case the Buyer shall be in default for 30 days in making payment of any sum or sums due hereunder to the Seller, the Seller shall have the right upon giving 40 days' notice in writing of its election so to do, to shut off the supply of gas hereunder and cancel this agreement if such default continues for such further period of 40 days; and in the event of the continuance of default as aforesaid, this agreement shall forthwith terminate without prejudice to the rights of the Seller to recover all the amounts then due.

(20) This contract is made in contemplation of the proposed consolidation of the Buyer with the Citizens Light, Heat and Power Company of Johnstown, and all reference herein contained to the supplying of the requirements of the Buyer shall be deemed to apply to the requirements, in the territory described in Paragraph 23 hereof of the new consolidated corporation so to be formed or its successors, or the assigns of the Buyer or such consolidated corporation if this contract is assigned as provided in Paragraph 25 hereof.

(21) This contract, unless sooner terminated pursuant to the provisions herein contained, shall continue thirty (30) years from the date hereof. Upon the termination of the said contract the Seller shall not be bound longer to maintain a pipe line or lines for [fol. 1032a] the transportation of natural gas to the City of Johnstown or its vicinity.

(22) In the event that the Seller shall under the provisions of Paragraphs 2 and 3 hereof serve a notice limiting the amount of natural gas to be supplied by it hereunder to an amount which shall be less, in total volume, than twenty-five (25) per cent. of the then annual requirements necessary to supply domestic consumers of the Buyer, then, and in such event, the Buyer shall have the right at any time within six (6) months of the receipt of such notice, of giving counter notice in writing, to the Seller that it will, at the expiration of ninety (90) days from the giving of such counter notice, terminate this contract, and upon the expiration of such ninety (90) days, the obligations under this contract shall terminate.

(23) The territory which it is contemplated the Buyer shall have the right to supply with natural gas to be supplied by the Seller hereunder, shall be the City of Johnstown, as the same may now or hereafter exist, and the following described territory outside of said City, namely: Borough of Westmount, Village of Walnut Grove, Borough of Franklin, Borough of East Conemaugh, Borough of Dale, Borough of Ferndale, Upper Yoder Township, Lower Yoder Township, Stonycreek Township.

The Seller agrees during the life of this agreement that it will not (without the written consent of the Buyer) sell or deliver or contract to sell or deliver to anyone other than the Buyer, any natural gas for use, or that may be used or consumed within said territory; and it is further agreed that if at any time during the life of this [fol. 1033a] agreement the Buyer gives notice to the Seller that any natural gas produced or transported or delivered by the Seller (other than that sold and delivered to the Buyer by it) is being used or consumed in any part of said territory, and if such use or consumption of such natural gas by any person or corporation continues for more than thirty (30) days after the receipt of such written notice by the Seller, the Seller agrees and shall be bound to pay to the Buyer 25 cents per thousand cubic feet for such natural gas so used or consumed within said territory after the said period of thirty (30) days. And it is expressly agreed that the Seller shall at all events and under all circumstances and irrespective of the continuance of this Agreement or service hereunder, remain bound until August 12th, 1939, (save only in the single case of the prior termination of this Agreement on account of default of the Buyer), by all obligations of this Paragraph (23) with regard to keeping all natural gas produced, transported or delivered by it from use, consumption or sale in said territory.

(24) In the event of inability or failure of the Seller to supply the Buyer with all the natural gas required by the Buyer, the Buyer may supply the deficiency by the admixture and distribution of manufactured gas, or natural gas obtained from other sources, and the quantity of gas so supplied shall be carefully measured at the works or at the station by large meters, and the quantity so ascertained shall be deducted from the total amount of gas sold by the Buyer to ascertain the quantity of natural gas for which the Seller shall be paid, and in the ascertaining of the amount of manufac- [fol. 1034a] tured gas, or gas obtained from other sources, provision shall be made for leakage thereof, or, if the Seller so elect, it may at his own expense, provide accurate meters, subject to test of the Buyer, to measure the natural gas supplied by it to the Buyer, or may measure the gas at the point of delivery by Pitot tubes at eight (8) ounces atmosphere.

In the event that the Buyer shall as in this paragraph provided supplement the natural gas supplied by the Seller by either natural or artificial gas obtained from other sources, the Buyer shall be entitled to fix such price as it may deem proper for the sale of any of its gas; provided, however, that any increase in price made by

the Buyer does not reduce its consumption of the Seller's natural gas below the amount which the Buyer is then obligated to take hereunder and the Seller is then actually supplying hereunder.

(25) This contract shall be binding upon the parties hereto, their successors and assigns, and subject to the limitation hereinafter mentioned, shall be assignable by the parties hereto. Upon any assignment, the assignee shall become bound by all the obligations and shall succeed to all the rights of his assignor, but no such assignment shall operate except with the written consent of the other party to this agreement to discharge the assignor from any of its obligations hereunder.

In witness whereof the parties hereto have caused this agreement to be signed by their respective presidents, or vice presidents, attested by their respective Secretaries, and their respective common and cor- [fol. 1035a] porate seals to be hereunto affixed as of the date and year first above written.

The Peoples Natural Gas Company, by John G. Pew, Vice President. Attest: Christy Payne, Secretary. (Seal). Johnstown Fuel Supply Company, by Geo. W. Crawford, President. Attest: H. C. Reeser, Secretary. (Seal.)

[fol. 1036a] EXHIBIT No. "J-4"—Filed September 20, 1917

Application of Johnstown Fuel Supply Co. for Charter and Certificate of Incorporation

To His Excellency Edwin S. Stuart, Governor of Pennsylvania.

SIR: In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of natural gas companies," approved the 29th day of May, A. D. 1885; the undersigned, five of whom are citizens of Pennsylvania, having associated themselves together for the purpose of producing, dealing in, transporting, storing and supplying natural gas, and desiring that they may be incorporated, and that letters patent may be issued to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is Johnstown Fuel Supply Company.

2d. Said corporation is formed for the purpose of producing, dealing in, transporting, storing and supplying natural gas.

3d. The place or places where natural gas is intended to be mined for and produced or received, the Counties of Greene, Fayette, Somerset, Westmoreland, Cambria, Indiana, Armstrong, Clarion and Jefferson, in the State of Pennsylvania.

[fol. 1037a] 4th. The place or places where it is to be supplied to consumers, the City of Johnstown, in the County of Cambria, State of Pennsylvania, and its suburbs, as well as such other places along the route of the pipe line or lines and branches of the said corporation as may desire to have the same.

5th. The general route of its pipe line or lines and branches is, from a point at or near Mount Morris in Greene County, Pennsylvania, thence in a northeasterly direction, through and throughout the Counties of Greene, Fayette, Somerset, Westmoreland, Cambria, Indiana, Armstrong, Clarion and Jefferson, in the State of Pennsylvania, to a point at or near Sigel in the said County of Jefferson.

6th. The general office of said corporation is to be located in the City of Pittsburgh, County of Allegheny, State of Pennsylvania.

7th. Said corporation is to exist perpetually.

8th. The names and residences of the subscribers and the number of shares subscribed by each are as follows:

Name	Residence	No. of shares
George W. Crawford,	Emlenton, Pa	4,000
C. E. Crawford,	Emlenton, Pa	4,000
M. C. Treat,	Washington, Pa	4,000
J. M. Garard,	Columbus, Ohio	1,500
H. C. Reeser,	Pittsburgh, Pa	1,500
J. B. Wikoff,	Pittsburgh, Pa	1,000

9th. The number of Directors of said corporation is fixed at five and the names and residences of the directors who are chosen directors for the first year are as follows:

Name	Residence
[fol. 1038a] George W. Crawford	Emlenton, Pa.
C. E. Crawford	Emlenton, Pa.
M. C. Treat	Washington, Pa.
J. M. Garard	Columbus, Ohio.
J. B. Wikoff	Pittsburgh, Pa.

10th. The amount of the Capital Stock of said Corporation is $400,000.00, divided into 16,000 shares of the par value of $25.00, and $40,000.00, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said corporation, whose name and residence are: H. C. Reeser, Pittsburgh, Pa. Address, No. 2017 Farmers Bank Building.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, a Notary Public, in and for the county aforesaid, personally came the above named George W. Crawford, C. E. Crawford, M. C. Treat, J. M. Garard, H. C. Reeser and J. B. Wikoff, who, in due form of law, acknowledge the foregoing instrument to be their act and deed for the purposes therein specified:

Witness my Hand and Seal of office, the Nineteenth day of March, A. D. 1907.

Walter W. Rathbun, Notary Public. My Commission expires Feb. 14th, 1910. (Seal.)

[fol. 1039a-1045a] STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Personally appeared before me, this 19th day of March, A. D. 1907, Geo. W. Crawford, C. E. Crawford, M. C. Treat, J. M. Garard, H. C. Reeser, and J. B. Wikoff, who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Geo. W. Crawford, C. E. Crawford, M. C. Treat, H. C. Reeser, J. B. Wikoff, J. M. Garard.

Sworn and subscribed before me, this 19th day of March, A. D. 1907. Walter W. Rathbun, Notary Public. My commission expires Feb. 14th, 1910. (Seal.)

[fol. 1046a] EXHIBIT No. "J-5"

Certified copy of record No. 375, June term, 1907, Court of Common Pleas of Cambria County, in re condemnation by Peoples Natural Gas Co. for pipe line over Garvey lands—Filed September 21, 1917.

Among the Records and Proceedings enrolled in the Court of Common Pleas in and for the County of Cambria, in the Commonwealth of Pennsylvania, to No. 375, June Term, 1907, is contained the following:

Copy of Continuance Docket Entry

B. B. Chisty, Payne.
8 May, 1907, in re condemnation by the Peoples Natural Gas Co., 375, for pipe line over land of B. F. Garvey, in Lower Yoder Twp.
Pro. Troxell, for Sheriff, $1.50.
Pro. Kinkead for County, .55.
8 May, 1907, Bond filed.

And now, April 23rd, 1907, the within bond is approved nisi, the approval to become absolute if no exceptions be filed within 15 days from this date.

By the Court.

[fol. 1047a] And now, November 17th, 1908, by direction of the plaintiff (see paper filed) the above action discontinued.

Barker & Barker.

17 Nov., 1908, Paper of Settlement filed. Cert. issued.

In the Court of Common Pleas of Cambria County

No. —, —— Term, ——

In re Bond of THE PEOPLES NATURAL GAS COMPANY to B. F. GARVEY

To the Honorable the Judges of the Court of Common Pleas of Cambria County:

The Petition of The Peoples Natural Gas Company, respectfully represents:

That The Peoples Natural Gas Company, Petitioner herein, is a corporation, incorporated on the 26th day of June, 1885, under the laws of the State of Pennsylvania, and organized and existing under and by virtue of an act of Assembly entitled "An Act to Provide for the Incorporation and Regulation of Natural Gas Companies," approved on May 29th, 1885, which Act confers upon Natural Gas Companies incorporated under its provisions the right of Eminent Domain for the laying and maintenance of pipe lines for the transportation of natural gas;

[fol. 1048a] That it is engaged in the business of supplying natural gas to the public for heat, light and power, to persons, firms and corporations residing in Pennsylvania, in townships, boroughs and cities along the route of its pipe line branches and pipe line systems, and that the pipe line herein described is for the transportation and supply of gas for public use and consumption;

That your Petitioner has made a survey for a twelve-inch pipe line for the transportation of natural gas from a point near the town of Derry, in Westmoreland County, Pennsylvania, to a point near the City lines of the City of Johnstown, in Cambria County, Pennsylvania, and is now constructing and laying said line;

Petitioner desires to enter upon the lands of B. F. Garvey, dig a trench and bury therein at a depth of at least 24 inches from the surface, the said 12-inch pipe line upon the route and location as now surveyed.

The lands of the said B. F. Garvey which Petitioner desires to cross are situate in Lower Yoder Township, Cambria County, Pennsylvania, and are bounded—

On the East by lands of Slavish Church and Cemetery and Strayer Plan of Lots, and on the West by lands of Morrellville Coal & Coke Company, on the waters of St. Clair Run and Nigger Run;

And the route surveyed across the said lands on which Petitioner desires to construct said pipe line is as follows: Beginning at a point on the line of the Morrellville Coal & Coke Company in the Southwestern line between the lands of said Morrellville Coal & Coke Co., [fol. 1049a] and said B. F. Garvey, the said point being South 50° East 225 feet from the Southwestern corner of said lands of B. F. Garvey with lands of said Morrellville Coal & Coke Company, and running thence North 69° East 340 feet, thence North 65° East 1,680

feet, thence North 80° East 177 feet, leaving the lands of said B. F. Garvey at a point 96 feet North 45° West from the corner of land of B. F. Garvey with the Cemetery Lot of the Slavish Church, as shown on the survey plat attached to the Bond herewith.

Said Petitioner has endeavored, through its agent, J. H. Carey, to agree with the said B. F. Garvey as to the damages B. F. Garvey should receive from the said Petitioner for the laying over his land of the pipe line as above described, but has not been able to so agree;

That said Petitioner by the hand of its agent, J. H. Carey, has tendered to the said B. F. Garvey, a bond duly executed by said Petitioner as principal and the Fidelity & Deposit Company of Maryland, as surety, to the said B. F. Garvey. Said bond bearing date the 12th day of April, 1907, in the sum of Five Thousand ($5,000.00) Dollars, conditioned upon the payment of the said petitioner, or its surety, to the said B. F. Garvey, his heirs or assigns of the damages he or they may sustain by reason of the construction of the said pipe line over the property aforesaid, together with all costs for which Petitioner is liable;

Said Petitioner says that the said bond is sufficient security for the payment of the damages aforesaid and that the said Petitioner, by the hand of its agent, the said J. H. Carey, has served written notice upon said B. F. Garvey, making known to him the contents of the [fol. 1050a] notice, that the said Petitioner would ask of the Honorable Court of Common Pleas of Cambria County, at 10:30 o'clock A. M. on April 23rd, 1907, leave to file for his benefit, the said bond.

Wherefore the said Petitioner herewith tenders to the Honorable, the Judges of the said Court, the affidavit of the said J. H. Carey, as to his effort to agree with the said B. F. Garvey; as to the said tender of the said bond; and as to the said notice, and herewith tenders the said bond for the approval of the said Court and to be filed in the records of the Court.

The Peoples Natural Gas Company, by John G. Pew, Vice-President. (Seal.)

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the subscriber, a Notary Public in and for said County, personally appeared John G. Pew, who being by me first duly sworn according to law, doth depose and say, that he is Vice Pres. of The Peoples Natural Gas Co., the within petitioner, and that the facts set forth in the foregoing petition are true and accurate to the best of his knowledge and belief.

Jno. Horrin, N. P. My commission expires March 10th, 1911.

[fol. 1051a] Bond for Damages under Right of Eminent Domain

Know all men by these presents that The Peoples Natural Gas Company, a Pennsylvania corporation, the principal, and The Fidelity and Deposit Company of Maryland, the surety, that latter named Corporation having an office in Johnstown, Pa., are held and firmly

bound unto B. F. Garvey, of Cambria County, Pa., in the sum of Five Thousand ($5,000.00) Dollars, to be paid to the said obligees, their certain attorneys, heirs, executors, administrators or assigns, to which well and truly to be made the said The Peoples Natural Gas Company, the principal, and Fidelity & Deposit Company of Maryland, the surety, and each of them do bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Witness the common and corporate seal of The Peoples Natural Gas Company by the hand of its Vice President, attested by its Secretary, and the common and corporate seal of Fidelity & Deposit Company of Maryland, by the hand of its Vice President attested by its Asst. Secy., this the 12th day of April, 1907.

Whereas, the said The Peoples Natural Gas Company, under lawful authority is about to enter upon the lands of the said obligees to construct a pipe line for the transportation of natural gas, over and upon certain lands of the said obligees, situate in the Township of [fol. 1052a] Lower Yoder, County of Cambria and State of Pennsylvania, bounded by lands of Slavish Church and Cemetery, and Strayer plan of lots on the East and on the West by Morrellville Coal & Coke Company, on waters of St. Clair Run and Nigger Run and the route surveyed being described as follows:

Beginning at a point on the line of land of the Morrellville Coal & Coke Company in the South Western line between the lands of said Morrellville Coal & Coke Company and said B. F. Garvey, the said point being South 50° East 225 feet from the South West corner of said lands of B. F. Garvey with lines of said Morrellville Coal & Coke Company and running thence North 69° East 340 feet; thence North 65° East 1,680 feet; thence North 80° East 177 feet, leaving the lands of said B. F. Garvey at a point 96 feet North 45° West from the corner of land of B. F. Garvey with the Cemetery lot of the Slavish Church, as shown on the survey plat attached hereto.

Now the condition of this obligation is such, that if the above bounden The Peoples Natural Gas Company, its successors or assigns, or the said Fidelity Deposit Company of Maryland, its successors or assigns, or either of them, do and shall well and truly pay, or cause to be paid until the said obligees, their heirs, executors, administrators or assigns, the damages they may sustain by reason of the construction of the said pipe line over the property aforesaid, when said damages shall have been agreed upon or determined by the mode provided by law, together with all the costs for which the said Corpora- [fol. 1053a] tion is liable, then this obligation to be void; otherwise to be and remain in full force and virtue.

The Peoples Natural Gas Company, by John G. Pew, Vice President. Attest: Christy Payne, Secretary. (Seal.) Fidelity & Deposit Co., Maryland, by Chas. R. Miller, Vice President. Attest: Geo. H. Gist, Assistant Secretary. (Seal.)

STATE OF MARYLAND,
City of Baltimore, ss:

On this 13th day of April, A. D. 1907, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came Chas. R. Miller, Vice President, and Geo. H. Gist, Asst. Secretary of the Fidelity & Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed, the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, [fol. 1054a] and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at the City of Baltimore, the day and year first above written.

Fred S. Axtell, N. P. My com. expires May, 1908.

B. F. Garvey, you are hereby notified that The Peoples Natural Gas Company will on the 23rd day of April, 1909, at 10:30 o'clock A. M., ask the Court of Common Pleas of Cambria County, Pennsylvania leave to file for your benefit, its bond with Fidelity & Deposit Company of Maryland as surety, dated the 12th day of April, 1907, in the sum of Five Thousand ($5,000.00) Dollars, conditioned for the payment of the damages you will sustain by the laying down of a certain pipe line (in the said bond described) for the conveyance of natural gas over your land in Lower Yoder Township, Cambria County, Pennsylvania.

Dated this 15th day of April, 1907.

The Peoples Natural Gas Company, by Christy Payne, Secretary.

[fol. 1055a] STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally came J. H. Carey, who being duly sworn according to law, doth depose and say: That he served notice, of which the above is a true copy, upon B. F. Garvey, by handing the same to him in person and making known the contents, on the 15th day of April, 1907.

J. H. Carey.

Sworn and subscribed before me, this 16th day of April, 1907. Jno. B. Corrin, N. P. My commission expires March 10th, 1911.

State of Pennsylvania,
County of Allegheny, ss:

Before, me, the undersigned, came this day J. H. Carey on behalf of The Peoples Natural Gas Company, who, being duly sworn according to law, doth depose and say: That he has endeavored to agree with B. F. Garvey, as to the damages he should receive from the said Company for the laying over his land of the pipe line described in the bond hereto attached, but has not been able to do so; that the said bond is sufficient security for the payment of the damages aforesaid, and that a tender of the said bond was duly made [fol. 1056a] by affiant to the said B. F. Garvey on the 15th day of April, 1907, and the same was refused by him.

J. H. Carey.

Sworn and subscribed before me this 16th day of April, 1907. John B. Horrin, N. P. My commission expires March 10, 1911.

Decree

And now, April 23rd, 1907, the within bond is approved nisi, the approval to become absolute, if no exceptions be filed within fifteen days from this date. By the Court.

Endorsement: No. 375 June Term, 1907. In re bond of The Peoples Natural Gas Co., to B. F. Garvey. Decree inside. Petition, Bond, Proof of Tender, Affidavit and Order of Court, filed 8 May, 1907. B. & B., Christy Payne, Att's for P. N. G. Co.

(Here follows diagram marked side folio pages 1057a and 1058a.)

[fol. 1059a] In the Court of Common Pleas of Cambria County

No. 375, June Term, 1907

B. F. Garvey

vs.

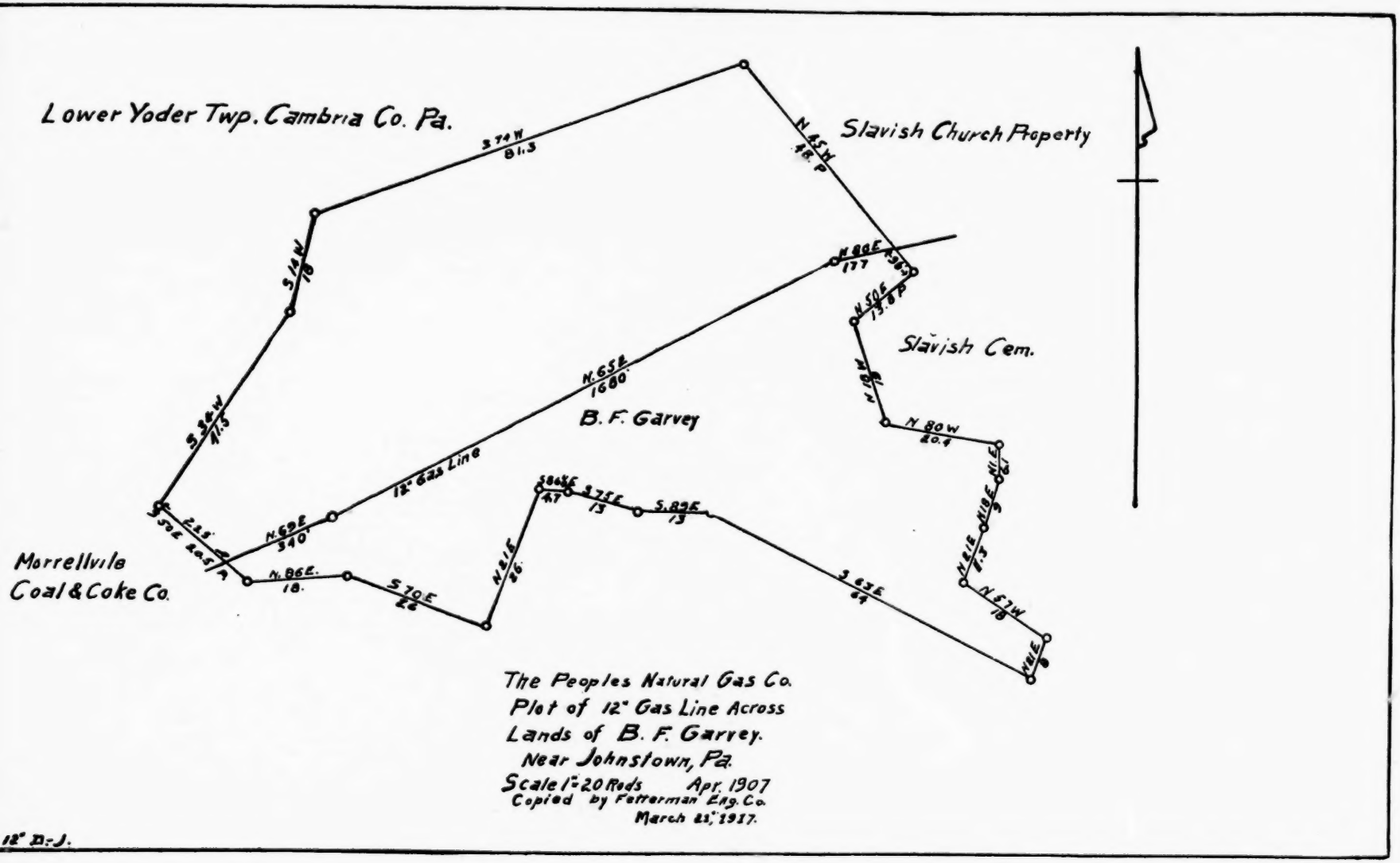
The Peoples Natural Gas Company

The Plaintiff, B. F. Garvey, hereby acknowledges to have received from The Peoples Natural Gas Company, payment in full of all claims for damages in the matter of the condemnation of a pipe line right of way, and hereby directs and authorizes Barker & Barker to mark the case at the above number and term "Settled" and "Discontinued," for and on behalf of Plaintiff, B. F. Garvey.

Witness my hand and seal this 13th day of November, A. D. 1908.

B. F. Garvey. (Seal.) Johanna Garvey.

Witness: J. H. Carey.


Lower Yoder Twp. Cambria Co. Pa.
Slavish Church Property
Slavish Cem.
B. F. Garvey
12" Gas Line
Morrellvile Coal & Coke Co.
S 74 W 81.3
N 45 W 48. P
S 14 W 18
S 36 W 41.5
N 65 E 1680
N 80 E 177
N 50 E 13.6 P
N 18 W 14
N 80 W 20.4
N 69 E 340
S 70 E 22
N 86 E. 18.
N 8 E 26
S 75 E 13
S. 82 E 13
S 63 E 64
N 57 W 18
N 11 E 8
The Peoples Natural Gas Co.
Plot of 12" Gas Line Across
Lands of B. F. Garvey.
Near Johnstown, Pa.
Scale 1" = 20 Rods Apr. 1907
Copied by Futterman Eng. Co.
March 23, 1917.

12" D-J.

Endorsement: No. 375, June Term, 1907. In the Court of Common Pleas, Cambria County, Pa. B. F. Garvey vs. The Peoples Natural Gas Company. Filed 17th November, 1908. Settlement.

[fols. 1060a-1064a] COMMONWEALTH OF PENNSYLVANIA,
County of Cambria, ss:

I, Geo. W. Williams, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated wherein The Peoples Natural Gas Company, Plaintiff, and B. F. Garvey, Defendant, so full and entire as the same remains of record before the said Court at No. 375 of June Term, A. D. 1907.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 19th day of March, A. D. 1917.

Geo. W. Williams, Prothonotary. (Seal.)

[fol. 1065a] EXHIBIT NO. 2

Right-of-way Agreement, B. F. Garvey to Peoples Natural Gas Company

For and in consideration of One Thousand ($1,000.00) Dollars, to us in hand paid, receipt of which is hereby acknowledged, we, B. F. Garvey and Johanna Garvey, his wife, do hereby grant to The Peoples Natural Gas Company, its successors or assigns, the right of way to lay, operate and remove a pipe line for the transportation of gas, and erect, maintain, and operate a telegraph or telephone line, if the same shall be found necessary, on, over and through our lands situate in Lower Yoder Township, Cambria County, State of Pennsylvania, bounded and described as follows:

On the North by lands of —— ——.

On the East by lands of Slavish Church and Cemetery and Strayer Plan of Lots.

On the South by lands of —— ——.

On the West by lands of Morrellville Coal and Coke Company, with ingress and egress to and from the same. The said grantor, heirs or assigns to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said The Peoples Natural Gas Company, which hereby agrees to pay any damages which may arise to crops and fences from the maintaining, operating and removing said pipe line; said damage, if not mutually agreed upon, to be ascertained and determined by three distinterested persons, one thereof to be appointed by the said grantors, heirs or assigns, one by [fols. 1066a-1070a] The Peoples Natural Gas Company, its successors or assigns, and the third by the two so appointed as aforesaid, and the award of such three persons shall be final and conclusive.

The route of the line now laid on said land is shown on the survey plat which is attached and made a part of this grant.

The consideration above named is in full for all damages for the construction, operation and maintenance of said line to this date and in compromise and settlement of all claims of every kind and nature of the said grantors against said Gas Company to this date.

Witness the following signatures on this 13th day of November, A. D. 1908.

B. F. Garvey. (Seal.) Johanna Garvey. (Seal.)

Signed, sealed and delivered in the presence of J. H. Corey, Catharine F. Myers.

[fol. 1071a] EXHIBIT No. "J-9"

This Agreement, Made and entered into the 31st day of December, A. D. 1906, by and between the Peoples Natural Gas Company, a corporation organized and existing under the laws of the State of Pennsylvania, party of the first part, and George W. Crawford, and Carrol E. Crawford, of Emlenton, Pennsylvania, and M. C. Treat and John W. Donnan, of Washington, Pennsylvania, parties of the second part.

Whereas, the party of the first part is the owner of a large quantity of leases, gas wells and gas producing property situate in the Counties of Greene, Allegheny, Armstrong, Jefferson, Clarion, Westmoreland and Washington, in the State of Pennsylvania, and has a twenty (20) inch line leading from Greene County, Pennsylvania, to the City of Pittsburgh, Pennsylvania, which is connected to a line that passes through or near Derry, in Westmoreland County, and

Whereas, the parties of the second part have become the lawful owners of an ordinance or franchise authorizing them to lay mains and pipes in and through the City of Johnstown, Cambria County, Pennsylvania, for the supply of natural gas to said city and all consumers residing or doing business therein; and

Whereas, the parties of the second part contemplate the organization of a corporation under the laws of the State of Pennsylvania for the purpose of laying mains, pipes and conduits in and through the streets, lanes and alleys of the city of Johnstown, Cambria County, aforesaid, and through all boroughs, villages and places in [fol. 1072a] the immediate vicinity of Johnstown, for which they may obtain franchises, for the supply of natural gas for lighting and heating and other lawful purposes to all persons desiring to purchase the same; and

Whereas, the parties of the second part desire to purchase and secure their supply of gas for use in the said city of Johnstown and its outlying boroughs and places in its immediate vicinity, from the party of the first part, and

Whereas, the party of the first part is willing to sell and deliver to the parties of the second part, and to the corporation to be organized by them, all gas which they shall require for use in the

said City of Johnstown, and in the boroughs and other places in its immediate vicinity, at the price and upon the terms and conditions hereinafter set forth;

Now Therefore This Agreement Witnesseth, That the said party of the first part, for and in consideration of the premises, and of the covenants and agreements hereinafter contained on the part of the said parties of the second part to be paid, kept and performed, has covenanted and agreed, and by these presents does covenant and agree;

1. That it will commence, on or before the first day of April, 1907, and will lay, build and construct a twelve (12) inch line from its main line at or near Derry, Westmoreland County, Pennsylvania, to a point on or near the boundary line of the City of Johnstown, Cambria County, Pennsylvania, and will connect at that point said twelve inch line with the system of mains and pipes to be constructed by the parties of the second part, or the corporation to be organized by them, as hereinafter provided, for the supply of natural gas to [fol. 1073a] the City of Johnstown, and to the boroughs and other places lying in the immediate vicinity of said city, and will sell and supply to the said parties of the second part, and to the corporation to be organized by them, to the extent of its ability to do so by reasonable diligence in drilling wells and producing gas, such quantity of gas as the parties of the second part, or the corporation to be organized by them, shall require for the supply to consumers in the said City of Johnstown and in the boroughs and other places in the immediate vicinity of said city for and during the full period of time while this contract shall remain in force and effect.

2. That it will sell gas to the parties of the second part, and to the corporation to be organized by them during the period of five years from and after the date upon which it shall commence making such delivery, at a rate or price which shall be equal to seventy (70%) per centum of the gross receipts of the parties of the second part, and the corporation to be by them organized, from the sales of gas to consumers; and after the expiration of five years from the date upon which it shall first commence supplying gas to the parties of the second part, or to the corporation to be by them organized, at a rate or price which shall be equal to seventy five (75%) per centum of the gross receipts of the parties of the second part, or the corporation to be organized by them, from sales of gas to consumers.

In Consideration of the Premises the said parties of the second part for themselves, and the corporation to be organized by them, covenant and agree:

I. That they will take prompt steps to organize a corporation under the laws of the State of Pennsylvania for the supply of natural [fol. 1074a] gas for lighting, heating and other lawful purposes to the City of Johnstown, to the outlying boroughs and places in the immediate vicinity of Johnstown where franchises are obtained,

and to persons and corporations residing and doing business therein, and will convey and secure to such corporation when organized all ordinances and franchises necessary to enable it to build, construct, maintain and operate a system of mains and pipes in and through the streets, lanes, alleys and public grounds of the City of Johnstown, Cambria County, Pennsylvania, and in and through the streets, lanes, alleys and public grounds of outlying boroughs and places in the immediate vicinity of Johnstown, for the supply of natural gas to consumers.

II. That they will commence, not later than April 1st, 1907, and in an adequate, skillful and workmanlike manner, fully pipe the City of Johnstown with new iron or steel pipe for the supply of natural gas to consumers, and will, in like manner, pipe all of the outlying boroughs and places in the immediate vicinity of Johnstown for which they may obtain franchises, for the supply of gas to consumers, and will furnish all necessary meters and appliances requisite and necessary for a full compliance with the ordinances under which they, or the corporation organized by them, may be authorized to lay mains and pipes in and through the said city of Johnstown and the said outlying boroughs and places.

III. That they, and the corporation to be organized by them, will complete their said plant in the city of Johnstown and in the outlying boroughs and places as promptly as they can do so by the exercise of reasonable diligence, but not later than June 1st, 1908.

[fol. 1075a] IV. That the parties of the second part, and the corporation to be organized by them, will purchase from the party of the first part all of the natural gas which they shall require for the supply of consumers which may be connected with their said plant during the period of the continuance of this contract, and will pay to the party of the first part for said gas a sum or price equal to seventy (70%) per centum of their gross receipts, and of the gross receipts of the corporation to be organized by them, from sales of gas for and during the first five (5) years immediately following the date upon which they shall first commence to receive gas from the party of the first part under this contract; and after the expiration of said five (5) years, a sum or price equal to seventy-five (75%) per centum of their gross receipts from sales of gas, as aforesaid,

V. That they will pay to the party of the first part for all gas received under this contract during any month, on or before the 20th of the month following that in which such gas shall be received.

VI. That they, and the corporation to be organized by them, will on or before the 20th day of each and every month, furnish to the party of the first part a statement showing (a) the gross amount of sales of gas to consumers during the last preceding month, as shown by the readings of the meters through which said gas was sold and supplied to consumers; and (b) the amount due to the party of the first part on account of the gas so received by them from the party

of the first part during the last preceding month, and will accompany such statement with a certified check or draft for the amount due to the party of the first part, as show by said statement.

[fol. 1076a] VII. That they, and the corporation to be by them organized, will measure all gas sold to consumers by means of standard registering meters to be placed by them at their own expense, and will, during the period of this contract, sell no gas to any consumer or consumers at a less rate than thirty (30) cents for each one thousand (1,000) cubic feet.

VIII. That all gas sold to consumers under this contract shall be delivered at a pressure not to exceed eight (8) ounces to the square inch.

IX. That they, and the corporation to be organized by them, will at all times during the continuance of this contract, keep their mains, pipes and appliance in a condition of good repair to prevent the waste and escape of gas, and will keep their registering meters in a good condition of repair for the measurement of the gas to be supplied through them to consumers.

It is mutually agreed by and between the parties hereto:

1st. That the quantity of gas delivered by the party of the first part to the parties of the second part, or to the corporation to be organized by them under this contract, shall be ascertained monthly by the reading of the meters by which such gas is supplied to consumers, which method is hereby adopted by the parties to this agreement as the basis of such measurement.

2nd. That the party of the first part, by its officers or duly appointed agent, shall at all times have free access to inspect second parties' plant or the purpose of seeing that the mains, pipes, meters and appliances are in a condition of good repair, and for the purpose of inspecting its books, papers and accounts in order to ascertain that [fol. 1077a] the statements to be rendered to the party of the first part as hereinbefore provided, are truthful and accurate.

3rd. That the party of the first part shall not be responsible to the parties of the second part, or to the corporation to be by them organized, for any temporary failure of gas growing out of the breaking or freezing of lines or wells, or from any accidental or unfor-seen cause, or by reason of the temporary shutting off of the supply of gas for the purpose of making necessary and needful changes in its lines.

4th. That the party of the first part shall not be responsible for any partial or complete failure in the supply of gas to be furnished under this contract, growing out of the failure of the gas fields, or which could not be prevented by the exercise of reasonable diligence on the part of the party of the first part.

5th. That the party of the first part may shut off the gas to be delivered to the parties of the second part, or to the corporation to

be organized by them, and may at its own option terminate this contract for either or any of the following reasons:

i. For failure to fully pipe the City of Johnstown and such outlying boroughs and places for which they may obtain franchises in the manner hereinbefore provided for, and for failure to keep its mains and pipes in a condition of good repair to prevent the waste and escape of gas.

ii. For fraudulent representations in regard to the amount of gas received by the parties of the second part from the party of the first part under this contract.

iii. For failure to pay bills for gas supplied under this contract for a period of ten days after the same shall become due and payable; and

[fol. 1078a] iv. For inability to supply to the parties of the second part a sufficient quantity of gas to make it reasonably profitable to longer maintain its said main line from Derry to Johnstown.

6th. That this contract shall go into force and effect immediately after its execution, and shall remain in force and effect for the term of ten years from the 1st day of October, 1907.

7th. That the corporation to be organized by the parties of the second part, as hereinbefore provided, shall, as soon as its organization is completed, endorse its acceptance of all of the terms and provisions of this contract upon the back thereof, after which said contract shall be binding upon said corporation in like manner as if it had been originally made a party thereto.

In witness whereof the party of the first part has hereunto caused its corporate seal to be affixed, and the same to be attested by its President and Secretary, and each of the parties of the second part has hereunto set his hand and seal on the day and year first above written.

Executed in Duplicate.

The Peoples Natural Gas Company, by John G. Pew, Vice-President. Attest: Christy Payne, Secretary. (Seal.) Geo. W. Crawford. (Seal.) C. E. Crawford. (Seal.) M. C. Treat. (Seal.) John W. Donnan. (Seal.)

[fol. 1079a] For and in consideration of the mutual promises to be kept and performed, as set forth in the within contract, the Johnstown Fuel Supply Company, being the corporation agreed to be incorporated to succeed the parties of the second part named in said contract and now duly organized under the laws of the Commonwealth of Pennsylvania, hereby accepts, approves, ratifies and confirms the said contract and undertakes, covenants and agrees to and with The Peoples Natural Gas Company, its successors and assigns, to be bound by all the terms and provisions thereof, as if the said Johnstown Fuel Supply Company had been originally a party to the contract.

Witness the common and corporate seal of the said Johnstown Fuel Supply Company duly affixed and attested by its proper officers this 31st day of December, A. D. 1907.

Johnstown Fuel Supply Company, by Geo. W. Crawford, President.

Attest: H. C. Reeser, Sec'y. (Seal.)

[fol. 1080a] EXHIBIT No. "J-10"

This agreement, made and entered into the 2nd day of December A. D. 1908, by and between The Peoples Natural Gas Company, a Pennsylvania Corporation, party of the first part, and the Johnstown Fuel Supply Company, also a Pennsylvania corporation, party of the second part.

Witnesseth, that whereas in an agreement bearing date the 31st day of December, 1906, between George W. Crawford et al., contracting for themselves and a corporation to be by them organized under the name of the Johnstown Fuel Supply Company, of the one part, and The Peoples Natural Gas Company, of the other part, providing for the supply of natural gas to the City of Johnstown and vicinity, it was agreed that The Peoples Natural Gas Company should construct a 12 inch main supply line to a point at the city line of Johnstown, to there connect with the distributing lines of the Johnstown Fuel Supply Company, and

Whereas it is found to be more convenient that the main supply line be extended a distance of 12,000 feet into the City of Johnstown to a point of land at the junction of Little Conemaugh River, Stony Creek and Conemaugh River, where the main regulator of the party of the second part is constructed at the junction of the distributing lines and said extension of said main supply line, and both parties hereto are willing to share the expense of the said extension and desire to provide for its maintenance.

Now therefore this agreement witnesseth that for and in consideration of the premises and in supplement to the said agreement [fol. 1081a] of December 31, 1906, the parties hereto covenant, each with the other, for themselves, their successors and assigns, as follows:

1st. The party of the first part agrees to furnish the pipe and fittings for the construction of the said extension of the main supply line, including a regulator to be placed at the city line, and agrees to construct the said extension, laying and burying the said line for and on behalf of the party of the second part subject to the provisions of the franchise held by the party of the second part in said City of Johnstown.

2nd. The party of the first part further agrees that the said extension of the main supply line, being 12,000 feet of 12 inch pipe, with its fittings and connections (but not the said city line regulator), shall be and remain the property of the party of the second part.

3rd. The party of the second part agrees to pay for the said extension and pipe line fittings the sum of $19,234.50, the day of said payment, however, to be postponed to the day and date when the party of the first part for any cause ceases permanently to furnish natural gas to the party of the second part through said extension line for the Johnstown City plant of said second party.

4th. The party of the second part further agrees to keep the said extension of the main supply line, together with the said city line regulator, in a condition of good repair to prevent the waste and escape of gas, to be the same as if the said extension of the main supply line and said city line regulator were part and parcel of the distributing pipe constituting the plant of the party of the second part [fol. 1082a-1133a] in the City of Johnstown and vicinity, and subject to all of the provisions and terms of the agreement of December 31, 1906, relating thereto.

Witness the common and corporate seals of the parties hereto duly attested by their proper officers.

The Peoples Natural Gas Company, by John G. Pew, Vice President. Attest: Christy Payne, Secretary. (Seal.) Johnstown Fuel Supply Company, by Geo. W. Crawford, President. Attest: H. C. Reeser, Secretary. (Seal.)

[fol. 1134a] EXHIBIT No. "J-13"

To the Honorable Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania.

SIR: In compliance with the provisions of Section Five of an Act of the General Assembly of the Commonwealth of Pennsylvania entitled "An Act to Provide for the Incorporation and Regulation of Natural Gas Companies," approved May 29, 1885, The Peoples Natural Gas Company, a corporation created under the provisions of said Act, being desirous of altering its territory for the supply of natural gas for consumption and its pipe lines and branches, does hereby certify under its corporate seal as follows:

That at a meeting of the stockholders held pursuant to due and legal notice at the office of the company in Pittsburgh, Pennsylvania, on the 25th day of January, A. D. 1921, the following resolutions were unanimously adopted by the persons and body corporate holding and owning all of the outstanding capital stock of the corporation:

Whereas, this corporation by resolution of its stockholders adopted at a stockholders' meeting duly called and held at the company's office on April 19, 1907, authorized the extension of its territory for the supply of natural gas for consumption as well as the extension of the routes of its pipe lines in enlargement of the places of supply and routes named in its original charter and prior and other certificates of extension of territory, etc., so as to include the City of Johns-

[fol. 1135a] town, Cambria County, Pennsylvania, and cities, boroughs, and town settlements in the vicinity of Johnstown, in its territory for the supply of gas for consumption and also so as to extend the routes of its pipe lines to, or to the vicinity of, the City of Johnstown, Cambria County, Pennsylvania, and

Whereas, on many grounds which have been carefully considered it seems both necessary and desirable to alter such territory of supply of natural gas for consumption and the routes of its pipe lines.

Be it resolved, first, that the corporation alter the present routes of its pipe lines by surrendering and abandoning its trunk pipe line route, commencing at the point of intersection of the present route of its trunk pipe line from Derry, Westmoreland County, State of Pennsylvania to, or to the vicinity of, the City of Johnstown, Cambria County, State of Pennsylvania with its trunk line leading to the City of Altoona, State of Pennsylvania, and being a point on the farm now or formerly known as the Robinson and Duncan farm in Lower Yoder Township, Cambria County, and extending from said commencing point a distance of about 9,821 feet to the terminus of said route or line about five hundred feet from the City of Johnstown.

Second, That the corporation alter its present territory of supply of natural gas for consumption by excluding therefrom the City of Johnstown, Cambria County, State of Pennsylvania and the cities, borough and town settlements in the vicinity of Johnstown, includ-[fol. 1136a] ing the Borough of Westmont, Village of Walnut Grove, Borough of Franklin, Borough of East Conemaugh, Borough of Dale, Borough of Ferndale, Upper Yoder Township, Lower Yoder Township, Stonycreek Township and also the territory along the part of the said trunk pipe line described above as commencing at the point of intersection of the present route of its trunk line from Derry, Westmoreland County, State of Pennsylvania, to, or to the vicinity of, the City of Johnstown, Cambria County, Pennsylvania, with its trunk line leading to the City of Altoona, and being a point on the farm now or formerly known as the Robinson and Duncan farm, Lower Yoder Township, Cambria County, Pennsylvania, and extending from said commencing point a distance of 9,821 feet to the terminus of said route or line about 500 feet from the City of Johnstown, and to be abandoned, and surrendering and abandoning any and all rights it may have therein.

Be it also resolved: That the Vice President and Secretary of this corporation be, and they are hereby, authorized to make and execute under its common and corporate seal the certificate as required by the Fifth Section of the Act of May 29, 1885, and deposit the same in the office of the Secretary of the Commonwealth, setting forth the foregoing alterations in the corporation's territory, for the supply of natural gas for consumption and in the routes of its pipe lines and cause to be recorded in the office of the Recorder of [fol. 1137a] Deeds of the proper county or counties a copy or copies of said certificate.

In Testimony Whereof, the said The Peoples Natural Gas Company by order of its Board of Directors, has hereto affixed its cor-

porate seal duly attested by the Vice President and Secretary this 25th day of January, A. D. 1921.

The Peoples Natural Gas Company, by J. B. Tonkin, Vice President.

Attest: S. E. W. Burnside, Secretary. (Seal.)

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

Be It Remembered, that on the 26th day of January, A. D. 1921, before me, Recorder of Deeds in and for said County, personally appeared S. E. W. Burnside, Secretary of the above named corporation, The Peoples Natural Gas Company, who being duly sworn deposes and says that he was personally present at the execution of the above written Certificate and saw the common seal of the corporation duly affixed thereto is the common and corporate seal of the said company, and that the above written instrument or certificate was duly signed, sealed and delivered by and as and for the act and deed of the said company, for the uses and purposes therein [fol. 1138a & 1139a] mentioned, by authority and direction of the persons and bodies corporate holding a majority in interest of the capital stock of the said company and that the name of J. B. Tonkin and this deponent subscribed to the said certificate as the Vice President and Secretary of the said corporation in attestation of the due execution and delivery of the said certificate are of their own proper and respective handwriting.

S. E. W. Burnside.

Sworn to and subscribed before me the day and year first above written. Witness my hand and seal of office. John D. Graham, Recorder of Deeds. (Seal.)

Filed in the office of the Secretary of the Commonwealth on the 27th day of January, A. D. 1921.

Frederic A. Godcharles, Deputy Secretary of the Commonwealth.

[fol. 1140a] EXHIBIT No. "J-14"

July 25, 1919.

Johnstown Fuel Supply Co., Johnstown, Penna.
Attention P. J. Morrissey, Gen. Mgr.

GENTLEMEN:

It is provided in the 2nd and 3rd articles of the written agreement, dated August 14th, 1909, between The Peoples Natural Gas Company, termed the Seller and Johnstown Fuel Supply Company, termed the Buyer, that the Seller may terminate the deliveries of gas to the Buyer on giving written notice.

The available supply of gas has been diminishing with such rapidity in the past few years that this Company does not have

enough gas to satisfy the requirements of consumers directly connected with its plants; the shortage will be marked in the coming winter, if it should be an average winter, as each month sees a further decline in the available supply.

Under the circumstances this Company deems it advisable to give your Company written notice that the supply of natural gas to your Company will be entirely discontinued on and after the first day of October, 1920, at which time this Company desires that the contract relations between the Companies shall terminate.

More than twelve months' notice is given, in order that ample time may be allowed your Company to rehabilitate its artificial gas works or to take such other steps as it may desire.

[fol. 1141a] I take this occasion also of again calling your attention to the money which your company owes this company, and request that you make prompt payment of the bills which have been rendered, and which now amount to a very considerable sum.

The Peoples Natural Gas Company by (Sgd.) John B. Tonkin,
Vice President.

EXHIBIT No. "J-15"

Johnstown Fuel Supply Company

Office of the Secretary, 535 Vine St., Johnstown, Pa.

August 25th, 1919.

Peoples Natural Gas Company, 424 Sixth Avenue, Pittsburgh, Penna.

GENTLEMEN: Your letter of July 25, 1919, was received by me under date of August 14, 1919.

Under the present circumstances the Johnstown Fuel Supply Company does not recognize the right of the Peoples Natural Gas Company to discontinue its public obligation of furnishing the City of Johnstown and its inhabitants with a supply of natural gas for their use.

[fol. 1142a] The Johnstown Fuel Supply Company must also at this time again dispute your statement that this company is indebted to you other than for current accounts.

Yours very truly, (Sgd.) P. J. Morrissey.

PJM:W.
Copy to: Mr. Hepburn.

EXHIBIT No. "J-16"

August 26, 1919.

Tillman K. Saylor, Esq., City Solicitor, Johnstown, Penna.

DEAR SIR: I have no doubt but that Mr. Morrissey has already acquainted you with the action which The Peoples Natural Gas Com-

pany has taken, giving written notice to the Johnstown Fuel Supply Company of the termination of natural gas service taking effect October 1, 1920.

In order that you may have knowledge of the matter to communicate to the Mayor and to consumers of natural gas, I am enclosing herewith a copy of notice which is dated July 25th, 1919, and Mr. Morrissey's reply which is dated August 25th, 1919.

The Peoples Natural Gas Company, by J. B. Tonkin, Vice President.

[fol. 1143a] EXHIBIT No. "J-17"

Supplement No. 2 to P. S. C. Pa. No. 7

The Peoples Natural Gas Company, Pittsburgh, Pennsylvania

Whereas, an order of The Public Service Commission of the Commonwealth of Pennsylvania, entered on the 4th day of December, 1917, in the following two cases, viz:

Louis Franke vs. Johnstown Fuel Supply Company, Complaint Docket No. 1098-1916;

Cambria Steel Company v. Johnstown Fuel Supply Company, Complaint Docket No. 1083-1916;

requires The Peoples Natural Gas Company to file, post, and publish according to law its tariff and schedule of rates covering the service complained of in the above complaints, within fifteen days after the service of the order, and appeals in said cases dismissed as premature by an order of the Supreme Court of the Commonwealth of Pennsylvania, June 26, 1920;

The Peoples Natural Gas Company now protests against the said order of The Public Service Commission of Pennsylvania in said cases, and against its enforcement, and in support of this protest says that The Public Service Commission of Pennsylvania is without jurisdiction to make said order, for the reason that the relationship between The Peoples Natural Gas Company and the Johnstown Fuel Supply Company does not constitute a public service and is not within the jurisdiction of the Commission as conferred by the laws [fol. 1144a] of the State of Pennsylvania, and for the further reason that the transportation, sale and delivery of the gas referred to in said order constitutes interstate and not intrastate commerce, and that this Commission is without jurisdiction to make any orders with reference thereto. Without waiving this protest, but at all times insisting upon the same, The Peoples Natural Gas Company in compliance with said order now hereby files, subject to the notice of termination hereinafter set forth, a copy of the written contract between The Peoples Natural Gas Company and the Johnstown Fuel Supply Company, dated the 12th day of August, 1909; said copy is attached hereto, marked "Exhibit No. 1."

Notice is also hereby given that The Peoples Natural Gas Company has elected to terminate deliveries of natural gas to the Johnstown Fuel Supply Company on the first day of October, 1920, and in accordance with the second and third articles of the agreement dated August 12, 1909, between said companies, has given written notice to the Johnstown Fuel Supply Company of said termination; a copy of said notice is attached hereto, marked "Exhibit 2."

John B. Tonkin, Vice-President, 545 William Penn Way, Pittsburgh, Pa.

Issued by Order of The Public Service Commission of Pennsylvania, No. 1098-1916, and No. 1083-1916, December 4, 1917.

Exhibit No. 1 is printed as Exhibit "J-3" (page 1021a).

Exhibit No. 2 is printed as Exhibit "J-14" (page 1140a).

[fol. 1145a] EXHIBIT No. "J-18"

March 24, 1920.

Mr. P. J. Morrissey, General Manager Johnstown Fuel Supply Company, Johnstown, Pa.

DEAR SIR: We have heard nothing from you in response to the letter of July 25, 1919, concerning the termination of natural gas deliveries to the Johnstown Fuel Supply Company, October 1, 1920. Owing to good fortune in obtaining large quantities of gas from the McKeesport field, we were able to carry you through the winter with fair service, but the McKeesport field is now vanishing so rapidly that the condition of the natural gas supply for the coming winter is a very serious matter. I am therefore now writing you to call your attention again to the notice which was given you and to inquire what steps you are arranging to take care of the situation. I am also writing to City Solicitor Saylor because of the public interest affected by the termination of the contract.

Yours very truly, Christy Payne.

[1146a-1190a] EXHIBIT No. "J-19"

March 24, 1920.

Tillman K. Saylor, Esq., City Solicitor, Johnstown, Pa.

DEAR SIR: I am writing again today to the Johnstown Fuel Supply Company to inquire what that company is doing to take care of its consumers on and after October 1, 1920. You will recall that notice has been given to the Johnstown Fuel Supply Company and I call to your attention that we will discontinue the supply of natural gas on that date. The public welfare may be seriously affected if the Johnstown Fuel Supply Company does not take prompt steps to obtain a substitute fuel.

Yours very truly, Christy Payne.

[fols. 1191a—33]

EXHIBIT No. 13 TO EXHIBIT X

Johnstown Fuel Supply Company

Recapitulation of Fixed Charges & Operating Costs

Cost of Artificial Gas in Cents per M

		Intermittent vertical retorts				Horizontal gas ovens			
		100 c. f. per consumer per day	90 c. f. per consumer per day	80 c. f. per consumer per day	70 c. f. per consumer per day	100 c. f. per consumer per day	90 c. f. per consumer per day	80 c. f. per consumer per day	70 c. f. per consumer per day
7% Interest, plus annual depreciation, owned property, Exhibit No. 3	$28,052.00	7.00	7.77	8.74	9.98	7.00	7.77	8.74	9.98
7% Interest plus annual depreciation, leased property, Exhibit No. 4	21,283.00	5.31	5.90	6.63	7.58	5.31	5.90	6.63	7.58
7% Interest, plus annual depreciation, amounts charged to capital accts. Sept. 1, 1916, to Sept. 30, 1920, Exhibit No. 5	3,584.00	.90	1.00	1.12	1.28	.90	1.00	1.12	1.28
7% Interest, plus annual depreciation, additional property items necessary to artificial gas operation, Exhibit No. 6	.....	2.71	3.01	3.39	3.87	2.71	3.01	3.39	3.87
8% Interest, plus annual depreciation, cost of new holder, and work necessary to artificial gas operation, Exhibit No. 7	11,253.00	2.80	3.12	3.51	4.00	2.80	3.12	3.51	4.00

8% Interest, plus annual depreciation, cost of new coal gas plant, Exhibits 8 and 10	.....	26.30	26.90	27.60	28.40	22.40	23.00	23.60	24.20
Estimated Plant Operating Expenses, Exhibits No. 9 and No. 11	.....	39.40	41.80	44.20	46.70	45.20	47.50	50.00	52.60
Distributing & General Expense, Exhibit No. 12	.....	25.00	27.70	31.20	35.60	25.00	27.70	31.20	35.60
7% Interest on Materials & Supplies and cash working capital	2,800.00	.70	.78	.87	1.00	.70	.78	.87	1.00
		110.12	117.98	127.26	138.41	112.02	119.78	129.06	140.11
Plus 10% Contingencies	.....	11.02	11.80	12.72	13.84	11.20	11.98	12.90	14.00
		121.14	129.78	139.98	152.25	123.22	131.76	141.96	154.11
Net Selling price per thousand cubic feet	.....	1.21	1.30	1.40	1.52	1.23	1.32	1.42	1.54

[fol. 34] IN SUPERIOR COURT OF PENNSYLVANIA

REPORTS AND ORDERS OF THE PUBLIC SERVICE COMMISSION

NOTE.—Inasmuch as the reports and the orders of the Commission are identical, both in the Cauffiel (Franke) case, No. 19 October Term, 1923, in the Supreme Court, and in the Cambria Steel Company case, No. 20 October Term, 1923, in the Supreme Court, we print here a single copy of each.

First. The Orders Made Before June 26, 1920, the Date of the Decision of This Court Dismissing the Appeal.

Order of the Commission in Each Case—Filed December 17, 1917

This matter being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and demurrer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things having been had, and the Commission having found that the service which the Peoples Natural Gas Company is engaged in is a public service, and that the Peoples Natural Gas Company is a public service company within the meaning of the Public Service Company Law.

Now, to wit, December 4th, 1917, it is ordered: That the demurrer of the Peoples Natural Gas Company be and the same hereby is overruled.

It is further ordered: That the Peoples Natural Gas Company file, post and publish according to law its tariff and schedule of rates [fol. 35] covering the service complained of in this complaint within fifteen days after the service of this order.

And it is further ordered: That the application of the Johnstown Fuel Supply Company requesting permission to put into effect its schedule of increased rates in advance of the final finding and determination of the Commission, be and the same hereby is denied. (App. Vol. II, pp. 791a-936a.)

Second. The Report and Orders Made After June 26, 1920, the Date of the Decision of This Court Dismissing the Appeal.

Order of the Commission in Each Case—Filed Setpember 13, 1920

These matters being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and it appearing to the Commission at the hearing hereon that the Peoples Natural Gas Company had given notice of its intention to discontinue the supplying of natural gas to the Johnstown Fuel Supply Company, respondent, for the *the* public service rendered by said companies in the City of Johnstown, and further hearings, having been adjourned to a time to be fixed by the Commission between October 15 and November 1, 1920.

Now, to wit, September 13, 1920, It Is Ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company,

parties respondent, be and they are hereby severally required and directed to continue the public service rendered by each of them in the supplying of natural gas in the City of Johnstown until De- [fol. 36] cember 1, 1920, and until the further order of the Commission. (App. Vol. II, pp. 841a-964a.)

Report of the Commission in Each Case—Filed October 3, 1921

REED, Commissioner:

The parties concerned in this proceeding have agreed of record that the Commission shall first determine whether it has jurisdiction of the respondent, the Peoples Natural Gas Company, and if so, whether, under the evidence, it should require this company to continue supplying natural gas to the respondent, the Johnstown Fuel Supply Company, to enable that company to furnish the gas to consumers in the City of Johnstown. It is also agreed that if the Commission determines that it has such jurisdiction and the Peoples Company shall continue to supply gas to the Johnstown Company as it has heretofore been doing, then these companies shall be required to file their respective tariffs and schedules of rates which shall be subject to complaint by any party concerned, and in the event of complaint made the Commission shall then ascertain and determine the maximum just, due, equal and reasonable rates which the Peoples Company shall charge the Johnstown Company and which the latter company shall charge consumers in the City of Johnstown.

The Peoples Natural Gas Company is a Pennsylvania Corporation operating under the Natural Gas Act of 1885 and is engaged in producing, purchasing and distributing natural gas to consumers in the State of Pennsylvania, and the Johnstown Fuel Supply Company [fol. 37] is an independent Pennsylvania distributing company of natural gas. In 1909 a contract was entered into between these companies whereby the former, at the rates therein specified, agreed to supply natural gas to the latter for distribution in the City of Johnstown for a period of at least six years with a provision that thereafter it might terminate the contract upon twelve months' notice to the other party of its intention to do so. The Peoples Company continued to furnish the Johnstown Company with gas, under this contract, until October 1, 1920, at which date it terminated the contract by a notice previously given. It has since continued the supply of gas, pursuant to an order made against it by the Commission pending the final determination of complaints filed, which the Johnstown Company is distributing to over 11,000 consumers in the City of Johnstown who have more than $700,000.00 invested in fixtures and appliances required in making use of the gas thus furnished. The Peoples Company, since the order made against it by the Commission as hereinbefore stated, has made, under its common seal and deposited in the office of the Secretary of the Commonwealth, a certificate altering its territory of supply of natural gas for consumption, by excluding therefrom the City of Johnstown, and has recorded a copy of said certificate in the office of the Recorder of Deeds of the County of Cambria. It also contends that inasmuch

as it purchases a large part of the gas which it supplies to its Pennsylvania consumers from an allied West Virginia Company, and although the gas thus purchased is intermingled with gas which it produces as well as purchases in Pennsylvania, nevertheless its supplying gas to the Johnstown Company by wholesale for distribution in [fol. 38] the City of Johnstown is an interstate transaction and as such is solely within the jurisdiction of the Interstate Commerce Commission.

The foregoing recital of facts indicates the grounds on which the Peoples Company challenges the jurisdiction of the Commission over it in this proceeding. Prior to its having terminated its contract with the Johnstown Company and the filing and recording of the certificate altering its territory of supply, as above stated, this Commission held that it had jurisdiction to compel this company to file its tariff and schedule of rates covering its service in supplying natural gas to the Johnstown Fuel Supply Company for distribution to consumers in the City of Johnstown. This authority of the Commission, on appeal to the Superior Court, was upheld in an opinion by Judge Henderson, speaking for the court, to which nothing can be profitably added, Franke vs. Johnstown Fuel Supply Company, 70 Pa. Superior Court 446. With this adjudication in favor of our jurisdiction, the question now for determination is, has that jurisdiction been ousted by the Peoples Company canceling its contract with the Johnstown Company and making, filing and recording of the certificate excluding the City of Johnstown from its territory of supply of natural gas, or by both or either of these acts?

Inasmuch as the jurisdiction of the Commission was not acquired by virtue of the contract referred to, it cannot be defeated by the termination of that contract. The jurisdiction of the Commission was conferred by the statute creating and vesting in it authority to regulate the public service in which the Peoples Company is engaged and [fol. 39] the Company having undertaken, through the Johnstown Fuel Supply Company, to supply natural gas in the City of Johnstown, which was within its charter territory, that service ipso facto came under the regulatory authority of this Commission, and cannot now be abondoned in the manner attempted. The Peoples Company was a controlling factor in procuring the consumers of gas in the City of Johnstown to use natural instead of manufactured gas, and thereby succeeded in causing the artificial gas plant theretofore existing in the City to be eliminated and dismantled. The question therefore is not whether a company producing natural gas can be compelled in the first instance to supply its gas to an independent company engaged in distributing it to consumers, but whether having established such relation and being so engaged, it may under the facts and circumstances of this case, abandon the service at will. In our opinion the execution, filing and recording of the certificate referred to, without the approval of this Commission, is as futile to defeat its jurisdiction as the cancellation of the contract under which the company engaged in the service which it now seeks to abandon. If it be conceded that a natural gas company, prior to the passage of the Public Service Company Law, might at will so alter its terri-

tory of supply, under Section 5 of the Natural Gas Act of 1885 as to exclude certain consumers which it had theretofore undertaken to supply, Germania Refining Company vs. Alum Rock Gas Company, 226 Pa., 433, we take it that this section of that Act has been so far modified by the later Public Service Company Law that abandonment of service in chartered and occupied territory, such as disclosed [fol. 40] by the evidence in this case, is not now permissible without the sanction of this Commission. It follows from what has been said that the jurisdiction of the Commission as heretofore found by the Superior Court to exist, has not been in anywise affected by the steps since taken by the Peoples Company to oust it, and we accordingly so find and determine.

Having determined that the Commission has jurisdiction, the question recurs should it require the Peoples Company to continue supplying gas to the Johnstown Com-any? If the supply is shut off the customers on the latter's lines not only would be deprived of this natural product, but the fixtures and appliances installed by them at a cost approximately $700,000.00 for making use of it would be rendered valueless, since there is no other known practical source of supply available to them either by purchase or by exploring and drilling for the gas. It would also render valueless the Johnstown Company's distribution system in which it has approximately $— or more invested, except in so far as this system could be used in the distribution of artificial gas should a plant for its manufacture be installed.

The only reason advanced by the Peoples Company for discontinuing the supply of gas in the City of Johnstown is its inability to furnish adequate service, on account of the shortage of gas, to all its customers during the winter months, and that it deems its first duty is to furnish such service to those consumers taking the gas direct from it as contradistinguished from those taking it through the Johnstown Fuel Supply Company. It appears that since the [fol. 41] Peoples Company began supplying gas to the Johnstown Company it has extended its lines 25 or 30 miles east of the City of Johnstown to the City of Altoona and is supplying gas to about 12,000 consumers in that city, which supply is proposed to continue. There is practically no difference in the facilities of the patrons in Altoona and those in Johnstown for using coal in lieu of natural gas for heating purposes, and there is very little difference in the cost of coal between the two cities. However, if the supply of gas were shut off in Altoona there is an operating artificial gas plant there which would be available to those who would want to substitute manufactured for the use of natural gas, and in this they would have a decided advantage over consumers of natural gas in the City of Johnstown both as to the convenience in the use of gas and in the probable loss on the fixtures and appliances which would be rendered valueless in the City of Johnstown by the substitution of the use of coal in place of gas. Non constat that the consumers of gas in the latter city, when they equipped their premises for the use of natural gas, knew anything about the contract between these gas

companies, or that their equipment might be rendered valueless by either party to the contract terminating it at will or that their supply of gas was dependent upon any other terms and conditions than those common to all other consumers of natural gas.

Assuming that there is a shortage of natural gas and by reason thereof the Peoples Company will be unable to furnish an adequate supply in cold weather to all the consumers now on its lines, the Commission cannot determine in this proceeding what present consumers should or should not be deprived of the company's service. [fol. 42] Aside from the method here resorted to for the determination of such a question, the testimony is not sufficiently informing on which to base a finding. There is nothing in the record or evidence presented to justify a discontinuance of the supply of natural gas by the Peoples Company to the Johnstown Company for distribution in the City of Johnstown and the Commission finds and determines that this supply shall be continued and that notwithstanding the termination by the Peoples Company of its contract with the Johnstown Company for such supply of gas, or the executing, filing and recording by the Peoples Company of the certificate excluding the City of Johnstown from its territory of supply, the Commission has jurisdiction and authority to require the Peoples Natural Gas Company to continue this supply of natural gas as heretofore and to permit it to forthwith file, post and publish a tariff and schedule of rates for the gas and service thus supplied and furnished, and an order to that effect will accordingly be made.

Order of the Commission in Each Case—Filed October 3, 1921

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof;

[fol. 43] Now, to wit, October 3, 1921, It Is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.

[fol. 44] IN SUPERIOR COURT OF PENNSYLVANIA

THE MAJORITY OPINION AND THE DISSENTING OPINION FILED IN THE SUPERIOR COURT

(79 Pennsylvania Superior Ct., p. 560)

The Majority Opinion

KELLER, J.:

This controversy, which originated over the right of the Johnstown Fuel Supply Company (hereinafter called Johnstown Company) to impose on its customers a ready to serve charge of fifty cents per month, has changed its character, and at present is construed only with the right of the Peoples Natural Gas Company, the appellant, (hereinafter called Peoples Company) which furnishes the Johnstown Company its entire supply of natural gas, to discontinue such service without the consent or approval of the Public Service Commission. This the Peoples Company attempted to do, under the authority of Sec. 5 of the Natural Gas Act of May 29, 1885, P. L. 29, by filing with the Secretary of the Commonwealth a certificate excluding the City of Johnstown from its territory of supply, and having the same recorded in Cambria County.

On complaint to the Commission, that body held that this could not be done summarily and without its authority or approval and ordered the Peoples Company to continue to supply natural gas to the Johnstown Company for consumption by the public until its consent to such discontinuance of service had been applied for and obtained. [fol. 45] Many of the questions raised on the present appeals were decided by this Court adversely to the appellant in Franke vs. Johnstown Fuel Supply Co., 70 Pa., Superior Ct., 446, when another phase of this same litigation was before us. Notwithstanding the earnest and insistent argument of the able counsel for the appellant we are not convinced that our decision on the merits in that case was wrong. We there decided, (1) that in its relations with the Johnstown Company appellant was a public service company doing business and performing a public service, and was subject to the provisions of the Public Service Company Law with respect to its sales of natural gas; and (2) that the fact that it purchased some of the gas thus sold or furnished the Johnstown Company from a West Virginia corporation at the state line did not prevent the jurisdiction of the Public Service Commission from attaching, nor forbid regulation of its service and rates by the duly constituted state authority. We still think those conclusions are sound.

1. Appellant company is a corporation organized under the Act of May 29, 1885, P. L. 29, for the purpose of producing, dealing in, transporting, storing and supplying natural gas. Section 10 of that act declares the transportation and supply of natural gas for public consumption to be a public use and grants such corporations the right of eminent domain for the laying of pipe lines for the transportation and distribution of natural gas. Our Supreme Court held

that this grant was within the constitutional power of the legislature; Johnston vs. Peoples Natural Gas Co., 4 Sadler, 215, 2 Cent. Rep., 564, 7 Atl., 167; and that companies organized under said Act are [fol. 46] public corporations, engaged in a business of a public interest and not subject to local taxation upon land containing gas necessary and indispensable to the company in carrying out the public purpose for which it was incorporated: St. Mary's Gas Co. vs. Elk County, 191 Pa., 458. Art. I, Sec. 1 of the Public Service Company Law expressly provides that the term "Public Service Company" when used in the Act shall include all natural gas companies. The appellant company availed itself of the right of eminent domain created under Section 10 of the Act of 1885 and condemned land for the very purpose of extending its pipe line to the City of Johnstown so as to be able to supply gas to the Johnstown Company for consumption by the public, and in such condemnation proceedings declared of record "that the pipe line herein described is for the transportation and supply of gas for public use and consumption." It is true, as contended by appellant, that the Act of 1885, (Sec. 10) in connection with the grant of the right of eminent domain, only imposes upon natural gas companies the duty to furnish natural gas to consumers along their lines and within their respective districts. But it does not forbid the furnishing or sale of natural gas by one such corporation to another; on the contrary, it rather contemplates that one natural gas company may obtain a part or all of its supply of gas from another, otherwise there would be no reason for especially granting the company the right to "deal in" natural gas. (Sec. 1), "produce, mine, transport, store and supply" would have covered all other operations; nor for the use of the word "receive" in connection with its source of supply, (Sec. 2), if it were required to mine for or produce its own gas. It not being unlawful, therefore, for one [fol. 47] natural gas company to sell gas to another such company, such sale comes within the lawful operations of the corporation, under its charter, and is within the purview of the Public Service Company Law. It may be broadly stated that every public service company, while performing any service authorized by its charter is engaged in public service within the meaning of the Public Service Company Law and subject to the supervision and regulation of the Public Service Commission, so far as the State may lawfully supervise and regulate its operations. The opinion of Judge Henderson in the former case, 70 Pa. Superior Ct., 446, pages 455-458 so clearly and exhaustively disposes of this point that it is unnecessary to consider it at greater length or do more than refer to it in this connection. See also opinion of Judge Linn in Vernon Twp. vs. P. S. C., 75 Pa. Superior Ct., 54 pp. 60-62, which rebutted the contention that the Public Service Company Law did not apply to service rendered to a municipality; and Lehigh Valley Transit Co. vs. P. S. C., 78 Pa., Superior Ct., 105, pp. 111-113, where it was held that the rates and service of a street railway corporation are subject to the supervision and regulation of the Commission even as to operations voluntarily engaged in by authority of law, but not required as a part of its charter obligations.

2. Appellant is a Pennsylvania corporation. It has no lands or pipe lines outside the State of Pennsylvania, and does not own or transport any gas in any other state. It has gas wells in at least six counties in this state and produces 11/28 of all the gas it sells. It buys a very small quantity from another Pennsylvania Company, but most of the gas not produced by it.—practically 17/28 of its [fol. 48] supply,—it buys outright at the state line from the Hope Natural Gas Company, a West Virginia corporation which mines or procures the gas in that state. The gas thus received into its pipe lines at the state line near Brave, Greene County, is commingled with gas produced in its own wells in Greene County, Washington County and Allegheny County and is supplied to its own customers at the burner tips under special franchises to about 75 cities and boroughs in Pennsylvania. A branch line goes out from one of these main lines at McKeesport, from which the company supplies its customers in Jeannette, Greensburg and Latrobe, and the Johnstown Company, and from this line, at a point about 9,821 feet west of the Johnstown City Line, runs a line to Loretta, Portage, Cresson, Summit, Altoona and Juniata. Of the gas transmitted by this branch pipe line, about three-fourths is bought from the Hope Company and one-fourth is produced from the Peoples Company's own wells. It maintains a pumping station at the state line, near Brave, and one at Derry on the branch line serving the Johnstown Company. It does not make a business of wholesaling its gas; in fact, in every instance, except to the Johnstown Company, it furnishes the gas to its consumers at the burner tips and is a local distributing company. The fact that, operating under special franchises, it distributes the gas to 75 different localities does not make it any the less a distributing company.

The appellant company in this manner distributes gas from the same pipe line which runs to Johnstown to its consumers in a number of cities and boroughs, before the gas arrives at Johnstown. There is no doubt that as to these cities and boroughs the Peoples Com- [fol. 49] pany is subject to the supervision and regulation of the Public Service Commission, both as to service and rates. The appellant has admitted it by filing its schedules, and the decisions of the Supreme Court of the United States settle it beyond peradventure. In the case of Public Utilities Commission vs. Landon, 249 U. S., 236, the Kansas Natural Gas Company produced gas in Oklahoma and Kansas and by its own pipe lines transported the gas thus produced into and through Kansas and over into Missouri. It was unquestionably engaged in interstate commerce, and did not distribute at all to local consumers. It supplied gas through connecting pipe lines to 32 distributing companies which had consumers in 47 cities and towns in Kansas and Missouri, for a percentage of the gross amounts paid by the customers. The Kansas Natural Gas Company through its receivers, Landon et al., contended that the Kansas Utilities Commi-sion had no power to regulate the rates to be charged the consumers by the distributing companies and alleged such action to be an illegal interference with interstate commerce, but the Court said: "But we cannot agree with its (the lower

Court's) conclusions that local companies, in distributing and selling gas to their customers, acted as mere agents, immediate representatives or instrumentalities of the receivers, and as such carried on without interruption interstate commerce set in motion by them. That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also, it is clear that, as part of such commerce, the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state. (Citations.) But in no [fol. 50] proper sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce, and then disposed thereof at retail in due course of their own local business. * * * The thing which the receivers actually did was to deliver supplies to local companies. Exercising franchise rights, the latter distributed and sold the commodity so obtained upon their own account, and paid the receivers what amounted to two-thirds of their receipts from customers. Interstate movement ended when the gas passed into local mains."

The facts in this case would be exactly the same as the Landon case if the Hope Natural Gas Company transported the gas in its own lines from West Virginia into this state to some point west of Johnstown, and connected with the pipe line of the Peoples Company at that point. Under the Landon decision, the Public Service Commission of this state would then have jurisdiction to supervise and regulate the rates to be charged by the Peoples Company at such point of delivery. The Peoples Company is in no sense a transportation company or common carrier: Carothers' Appeal, 118 Pa., 468, 485. It received supplies of gas which had moved in interstate commerce, mingled it with gas produced by it in this state, and then disposed of the mixture in due course to its customers, on its own account exclusively: Landon case, supra, p. 245. "Its only business as disclosed by the evidence is the production and supply-[fol. 51] ing of gas. It does transport the gas from the source of supply to the distribution points, but this transportation is incidental merely to the business in which it is engaged. It is necessary that the gas be transported in pipes but nothing in the evidence tends to show that the defendant is a common carrier. It does not hold itself out as a transporter of gas for other companies or for private individuals. It is the owner of all the gas that is in its pipes and it has never engaged in gas transportation as a business." Franke vs. Johnstown Fuel Supply Co., 70 Pa. Superior Ct., 446, 455. The principle is the same whether its distributing line begins at Brave or at some point eastward; whether it serves one community or seventy-five; if it is purely a distributing and not a transportation company.

If the Public Service Commission has jurisdiction of the Peoples Company at some point of distribution along its line west or southwest of Johnstown, it follows that it retains that jurisdiction as to all

points on its pipe line east of and beyond such point. When the interstate movement once ended in the Peoples Company's pipe line, it did not reassume the character of interstate commerce, as the gas continued its flow eastward. The interstate movement actually ended when the gas passed into the main of the Peoples Company for distribution among its customers, which was at the state line, at Brave; the "city gate" referred to in some of the decisions, was, in fact, in the present case, at the state line where the delivery was complete and the purchaser received the gas for purposes of distribution within the state.

[fol. 52] The other case cited and relied upon by the appellant is even more adverse to its contention. In Pennsylvania Gas Company vs. P. S. C., 252 U. S., 23, the Pennsylvania Gas Company produced natural gas in Pennsylvania and in its own pipe lines directly transported it into New York and sold it to consumers in the City of Jamestown. It was held that as the rates of gas companies transmitting gas in interstate commerce are not only not regulated by Congress, but the Interstate Commerce Act expressly withholds the subject from federal control, the Public Service Commission of New York could regulate the rates to be charged consumers in Jamestown and make local regulations of a reasonable character, notwithstanding the gas was transported in interstate commerce. The opinion laid stress on the fact that the transmission was interstate commerce because the gas was transported and furnished directly by the producing company to the consumers in another state. That case would be like this one if the Hope Natural Gas Company produced its gas in West Virginia, transported it in its own lines into Pennsylania and sold its gas directly to consumers at various points in this state; and it holds that even so, the Public Service Commission of Pennsylvania could regulate the rates to be charged the consumers by the Hope Company at such points. It has no likeness to the instant case, since no gas is delivered by the Hope Company from its wells in West Virginia directly, and in its own pipe lines, to consumers in Pennsylvania. The Peoples Company buys gas outright at the state line and exercising franchise rights, distributes the gas thus owned by it, mixed with gas produced by it in this state, to its customers in [fol. 53] various cities and towns in Pennsylvania, constituting a transaction wholly intrastate in character. And, as before pointed out, the character of interstate transmission once having attached to the gas in appellant's pipe line, it is retained throughout its whole length thereafter.

There is nothing in the unreported decisions cited by appellant in its supplemental brief, (Central Trust Co. vs. Consumers L. H. & F. Co., U. S. Dist. Ct., Kansas, 1st Div.; State of Missouri vs. Kansas Natural Gas Co., U. S. Dist. Ct., West. Div., West. Dist. of Mo.; or in State of Kansas vs. Kansas Natural Gas Co., 208 Pacific, 622), which leads to a different conclusion. See also Banker Bros. Co. vs. Comth. of Penna., 222 U. S., 210; Newark Natural Gas & Fuel Co. vs. City of Newark, Ohio, 242 U. S., 405, 408; Bowman vs. Continental Oil Co., 256 U. S., 642, 648, 649.

(3) In addition to the propositions advanced on the former appeal, it is also contended that the Commission has no authority to

make the order complained of because in conformity with the provisions of Section 5 of the Act of May 29, 1885, supra, appellant has made and filed in the office of the Secretary of the Commonwealth, and recorded in Cambria County, a certificate surrendering and abandoning so much of its pipe line route as extends beyond the intersection of its line leading to Altoona, at a point 9,821 feet from the City of Johnstown, and excluding from its territory of supply the City of Johnstown and its immediate vicinity. This was done without application to, or the consent or approval of, the Public Service [fol. 54] Commission.

Appellant contends that such consent is not necessary because the right so to do was in terms granted by the Act of 1885, (Germania Refining Co. vs. Alum Rock Gas Co., 226 Pa., 433), is not expressly revoked by the Public Service Company Law and is preserved to it by Art. III, Sec. 12 of that Law, which provides: "Every public service company shall be entitled to the full enjoyment and exercise of all and every the rights, powers and privileges, which it lawfully possesses or might possess, at the time of the passage of this act, except as herein otherwise provided."

We have already pointed out that natural gas companies are expressly included within the public service companies governed by the act. The act provides that all such companies, shall "furnish and maintain such service, including facilities, as shall in all respects be just, reasonably adequate and practically sufficient for the accommodation and safety of its patrons, employees and the public and in conformity with such reasonable regulations or orders as may be made by the Commission." (Art. II, Sec. 1a), and forbids undue or unreasonable discrimination between localities (Art. III, Sec. 8b). The terms "service" and "facilities" as thus employed in the Act are used in their "broadest and most inclusive sense" (Art. I, Sec. 1). The Act grants power and authority to the Commission generally to supervise and regulate all public service companies doing business within the Commonwealth (Art. V, Sec. 1); to determine, specify and order the just, reasonable * * * and sufficient service, facilities, rules, regulations or practices to be put in force observed, rendered, used or furnished by public service companies [fol. 55] in the perfomance of their public duties, (Art. V, Sec. 2), and provides that the enumeration of special powers granted the Commission in the Act shall not exclude any power possessed by it under its general grant (Art. V., Sec. 28). It provides that the Commission must approve and issue its certificate of public convenience before such public service company can be incorporated, organized or created (Art. III, Sec. 2a), or begin the exercise of any right, power, franchise or privilege under any ordinance or municipal contract (Art. III, Sec. 2b). Without the approval of the Commission a public service company may not lawfully renew its charter or obtain any additional rights, powers, franchises or privileges by amendment or supplement to its charter, or otherwise (Art. III, Sec. 3a); or sell, assign, transfer, lease, consolidate or merge its property, powers, franchises or privileges to or with any other corporation or person (Art. III, Sec. 3c). In short, the Commission's powers of supervision and regulation are of the broadest and most compre-

hensive character and it is difficult to conceive of any subject of intrastate service, facilities, or rates not within its scope and authority.

Appellant frankly admits that it could not now be organized and incorporated without the approval of the Commission; that without such approval it could not obtain and exercise any new rights under municipal ordinance or contract; nor extend or enlarge its field of production or supply, or operate in new territory to replenish a dwindling supply; but it contends that it may still lessen its field of either production or supply simply by filing and recording the certificate referred to in Section 5 of the Act of 1885 and without [fol. 56] any action on the part of the Commission, irrespective of how helpless such a right would render the Commission in its supervisory powers, and how ineffective and abortive it would make its orders and regulations. If a natural gas company retains the arbitrary power to punish a community which has the hardihood to question any of its rates, regulations, or practices, by cutting it out of its field of supply and refusing to furnish it any gas at all, if it may evade the orders of the Commission relative to its service at a particular place by eliminating that place from its field of operations, the legislature might just as well not have declared such corporations subject to supervision and regulation by the Commission. We cannot agree to such a proposition. We are of opinion that the Act is broad enough in its grant of authority to the Commission to cover the present situation; that the broad general powers given the Commission apply to any alteration of territory of production or supply, and are not limited to such only as extend or increase such territory. Furthermore, the Public Service Company Law expressly declares the consent of the Commission necessary before any public service company can obtain any additional rights, powers or privileges, by any amendment or supplement to its charter or otherwise. (Art. III, Sec. 3a). A release from the performance of public duties or the furnishing of public service in a part of its territory which it would otherwise be bound to serve, may well be considered an additional privilege obtained no less than an extension of such service may be so regarded. Such a right or privilege may be negative as well as positive.

[fol. 57] Appellant cites in support of its contention our decision in the case of N. Y. & Penna. Ry. Co. vs. P. S. C., 72 Pa. Superior Ct., 523. It misconstrues the effect of that decision. We there decided that the Act of April 9, 1856, P. L. 293, furnishes a full and complete method of procedure for corporations desiring to surrender their charter powers and quit business or dissolve and that in such case the approval of the Public Service Commission is not necessary. But we were careful to distinguish between the term, power, and the extent of service or operation under that power. Regulation of the latter is expressly committed to the Commission. But the right to surrender the primary power or franchise of the corporation in the manner prescribed by the Act of 1856 is not affected by the Public Service Company Law.

This, we said, was "the absolute relinquishment of the corporate franchise to the extent of the power surrendered and if the franchise

is to do but one thing, is equivalent to a dissolution," p. 530. "The surrender of a franchise is the voluntary death of the corporation." Houston vs. Jefferson College, 63 Pa., 428, 437. "The power contained in the charter of the appellant was to operate a steam railroad in Pennsylvania under the provisions of the General Railroad Act. When it surrendered that power, it gave up its franchise to operate a railroad." N. Y. & Penna. Ry. Co. vs. P. S. C., supra, p. 529. Had the appellant in that case sought to abandon its service as to part of its chartered route, or relinquish passenger service while still retaining its franchise to operate a railroad, the consent of the Public Service Commission would have been necessary before it [fol. 58] could lawfully curtail its service in those respects: P. & R. Ry Co. vs. P. S. C., 67 Pa. Superior Ct., 604. The power contained in the charter of this appellant is to produce, deal in, transport, store and supply natural gas. The place where the natural gas is intended to be mined for, produced or received and the place or places where it is to be supplied to consumers, which are required to be set forth in the application for charter (Sec. 2, par. 2) constitute a definition or limitation of the extent of the general power conferred on the corporation by its corporate franchise. They may be changed or altered as provided by law,—with the approval of the Public Service Commission—without affecting the life of the corporation, but if the power to produce, deal in, transport, store or supply natural gas is surrendered, the corporation is dead, is not doing business, and is not subject longer to the supervision or regulation of the Public Service Commission.

Appellant has not surrendered the franchise power granted by its charter; it has merely sought to curtail its field of service under that power by abandoning certain territory which otherwise it would be bound to supply. This it cannot do without application to and the approval of the Public Service Commission.

The question before us is not, as stated by appellant, whether one natural gas company can be compelled to furnish another natural gas company with gas for its corporate purposes, but rather, where one natural gas company has for years voluntarily been supplying another such company with gas for consumption by the public in a municipality within the first company's charter field of supply, [fol. 59] whether it may summarily discontinue such service and eliminate said municipality from its charter field of supply, without first applying to and obtaining the consent of the Public Service Commission.

We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed.

Porter & Linn, JJ., Dissent.

IN SUPERIOR COURT OF PENNSYLVANIA

DISSENTING OPINION

LINN, J.:

Passing the disputed questions arising under the law of Pennsylvania, the decision of which cannot determine the federal question raised, I consider the order of the commission inconsistent with the interpretation of the commerce clause by the Supreme Court and therefore dissent. The order requires appellant to continue conducting interstate commerce with the Johnstown Fuel Supply Company after the notice of July 5, 1919, given pursuant to the contract of August 14, 1909, that appellant would cease such commerce after October 1, 1920,—certainly adequate notice but for the order of the commission. For present purposes it is assumed that the Johnstown Company would pay an adequate price, so that [fol. 60] no question on that subject is involved. The inquiry is, can the state require appellant to continue interstate commerce with the local company in the circumstances disclosed by the record.

In Pennsylvania Gas Company vs. Pub. Ser. Com., 252 U. S., 23, 28, it is said, "* * * the transmission and sale of natural gas produced in one state, transported by means of pipe lines and directly furnished to consumers in another state, is interstate commerce within the principles of the cases already determined by this court: West vs. Kansas Natural Gas Co., 221 U. S., 229; Haskell vs. Kansas Natural Gas Co., 224 U. S., 217; Western Union Telegraph Co. vs. Foster, 247 U. S., 105." And it was held that the New York Commission could regulate the rate charged to local consumers of gas in that State, although the direct sale of gas to consumers by the company which brought it into New York, was interstate commerce.

"The thing which the State Commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, and pertains to the furnishing of natural gas to local consumers within the City of Jamestown in the State of New York. The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the State, nevertheless the service rendered is essentially local, and the sale of gas is by the company to local consumers who are reached by the use of the streets of the city in which the pipes are laid, and through which the gas is conducted to factories and residences as it is required for use. The service is similar to that of a local plant fur- [fol. 61] nishing gas to consumers in a city.

This local service is not of that character which requires general and uniform regulation of rates by congressional action, and which has always been held beyond the power of the States, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of interstate commerce, its regulation in the distribution of gas to the local consumers is required in the public interest and has not been attempted under the superior authority of Congress.

It may be conceded that the local rates may affect the interstate business of the company. But this fact does not prevent the State from making local regulations of a reasonable character. Such regulations are always subject to the exercise of authority by Congress enabling it to exert its superior power under the commerce clause of the Constitution.

The comparison of the service 'to that of a local plant furnishing gas to consumers in a city' suggests reference to P. U. C. vs. Landon, 249 U. S., 236, in which the gas was not sold direct to the consumers by the importing company but was sold to local companies who made the distribution; in those circumstances, the court held, 'that the interstate movement ended when the gas passed into local mains; that the rates to be charged by the local companies had but an indirect effect upon interstate commerce, and, therefore, the matter was subject to local regulation.'" (252 U. S., at 28.)

[fol. 62] As it appears at bar that the wholesale delivery by appellant to the Johnstown distributing company is not a sale or distribution to local consumers, appellant is not in the position of the gas company whose rates to local consumers were fixed by the New York commission. In Johnstown the local distribution is by the intervenor, the Johnstown Fuel Supply Company, which receives the gas that can only be obtained by commerce among the states and sells it to over 11,000 consumers. It can therefore not be questioned, within the sense of both decisions cited, that, save for a matter next to be considered, the gas moved in interstate commerce and that the "interstate movement ended when the gas passed into the local main" of the Johnstown Company.

"Interstate commerce," it has been said, "is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods, Rearick vs. Pennsylvania, 203 U. S., 507, 512; The Pipe Line Cases, 234 U. S., 548, 560"; P. U. C. vs. Landon, 249 U. S., 236, 245.

An analysis of the transaction would seem to disclose every element of interstate commerce described in the cases quoted. The larger part of the gas involved comes,—and must come—from West Virginia. It is bought for distribution in Pennsylvania. "The negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce;" Crenshaw vs. Arkansas, 227 U. S., 389, 396. Appellant who buys the gas and [fol. 63] brings it into Pennsylvania, sells it in bulk to a local distributing company (as the receivers did in the Landon case). The selling company in West Virginia, the Hope Natural Gas Company, owns the pipe line through which the gas is conducted in West Virginia to the state line; appellant owns the pipe line on the Pennsylvania side of the state line, a boundary of course without area, and unable to support either receiving or delivering equipment; appellant and its West Virginia vendor are owned by one company.

Under the Pennsylvania Gas Company's case (supra), it would be agreed that if a single company procured the gas in West Virginia

and conducted it into Pennsylvania in its own pipe lines and chose to distribute it locally in Johnstown, the transaction would be interstate commerce up to the burner tips, and that the state could regulate the retail price at the burner tip in the absence of Congressional action. It would likewise follow from the Landon case (supra) that if a single company procured the gas in West Virginia and conducted it through its own pipe line to the point in Pennsylvania where appellant delivers the gas to the local distributor, the Johnstown Company, the transaction would retain its interstate character up to the moment the gas passed into the mains of the local company.

The determining inquiry then seems to be whether a transaction, which in its practical conception, possesses every characteristic of interstate commerce so defined, loses that interstate character because the title to the pipe line and contents south of the state line is in one company, and north of the state line is in another, both companies [fol. 64] being controlled by a third, the contents of the pipe being in process of interstate transportation "in a continuous route or journey." Certainly both the West Virginia vendor and the Pennsylvania vendee, the appellant, together are engaged in interstate commerce: Swift vs. U. S., 196 U. S., 375; W. U. Tel. Co. vs. Foster, 247 U. S., 105, 111, 113; Eureka Pipe Line Co. vs. Hallanan, 42 Sup. Ct., 101; United Fuel Gas Co. vs. Hallanan, 42 Sup. Ct., 105; Lemke vs. Farmers' Grain Co., 42 Sup. Ct., 244. In this inquiry is it material that title passes at the state line? In Rearick vs. Pennsylvania, 203 U. S., 507, 512, it is said: "'Commerce among the several states' is a practical conception not drawn from the 'witty diversities,' (Yelv., 33) of the law of sales: (Swift & Co. vs. United States, 196 U. S., 375, 398, 399. The brooms were specifically appropriated to specific contracts, in a practical, if not a technical, sense. Under such circumstances it is plain that, wherever might have been the title, the transport of the brooms for the purpose of fulfilling the contracts was protected commerce."

The character of interstate commerce attaches when property has "been started upon such transportation in a continuous route or journey:" Coe vs. Errol, 116 U. S., 517, 527. In Texas, etc., Railway Co., vs. Sabine Tram Co., 227 U. S., 111, it was held that shipments of lumber on local bills of lading shipped from one point to another in the same state, destined from the beginning for export, were shipments in foreign and not in intrastate commerce. The court said, "The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real [fol. 65] and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents should determine." In citing that decision in W. U. Tel. Co. vs. Foster (supra) the court added, "Practice, intent and the typical course, not titles or niceties of form, were recognized as determining the character * * *." See also Eureka Pipe Line Co. vs. Hallanan and United Fuel Gas Co. vs. Hallanan; Lemke vs. Farmers' Grain Co. (supra).

It is also immaterial in this inquiry, that appellant in many places sells gas direct to consumers at rates subject to regulation at the burner tips; at bar, appellant has been ordered to supply in bulk from a product moving in commerce among the states enough of that product to enable the Johnstown Fuel Supply Company to satisfy the requirements of its 11,000 consumers.

[fol. 66] IN SUPREME COURT OF PENNSYLVANIA

ASSIGNMENTS OF ERROR

(The Cauffiel Case)

First. The Superior Court erred in not sustaining the 9th assignment of error, said assignment being as follows:

"9. The Commission erred in entering the following order:
'This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of facts and conclusions thereon, which said report is hereby approved and made a part hereof;
Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.
[fol. 67] Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.'

(The particular part of said order to which this assignment is directed is as follows:

'Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.')"

The order of the Superior Court entered thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed.

We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

[fol. 68] Second. The Superior Court erred in not sustaining the 10th assignment of error, said assignment being as follows:

"10. The Commission erred in entering the following order:

'This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of facts and conclusions thereon, which said report is hereby approved and made a part hereof;

Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.'

(The particular part of said order to which this assignment is directed is as follows:

'Permission is hereby granted the Peoples Natural Gas Company, [fol. 69] respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.')"

The order of the Superior Court entered thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Third. The Superior Court erred in not sustaining the 11th assignment of error, said assignment being as follows:

"11. The Commission erred in entering the following order.

'This matter being before The Public Service Commission of the Comonwealth of Pennsylvania upon complaint and answer on file,

and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions [fol. 70] thereon, which said report is hereby approved and made a part hereof;

Now, to wit, October 3, 1921, it is ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of The Public Service Commission dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.'

and in thereby making permanent its interlocutory order of September 13, 1920, viz:

'Now, to wit, September 13, 1920, it is ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, parties respondent, be and they are hereby severally required and directed to continue the public service rendered by each of them in supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission.'

and compelling your petitioner to continue to supply gas to the Johnstown Fuel Supply Company on and after October 1, 1920, on which date the contract between your petitioner and the Johnstown Fuel Supply Company was terminated by notice of cancellation given in accordance with its terms and as above shown, without fixing the rate or price at which the service was to be rendered or gas fur- [fol. 71] nished from and after October 1, 1920, and as prayed by your petitioner in its petition filed as above shown."

The order of the Superior Court entered thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Fourth. The Superior Court erred in not sustaining the 12th assignment of error, said assignment being as follows:

"12. The Commission erred in not finding that the contract or agreement between your petitioner and the Johnstown Fuel Supply Company was cancelled and terminated October 1, 1920, and in not entering a final order dissolving its interlocutory restraining order entered September 13, 1920, and dismissing the petition dated August 27th, 1920, as to your petitioner."

The order of the Superior Court entered thereon is as follows:

"We are not now called upon to decide whether if appellant had [fol. 72] made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Fifth. The Superior Court erred in not sustaining the 13th assignment of error, said assignment being as follows:

"13. The Commission erred in not finding that petitioner was under no public service duty or other duty to supply gas to the Johnstown Fuel Supply Company or its customers or consumers on and after October 1, 1920, and in not dismissing petition dated August 27th, 1920, as to your petitioner."

The order of the Superior Court entered thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

[fol. 73] Sixth. The Superior Court erred in not sustaining the 14th assignment of error, said assignment being as follows:

"14. The Commission erred in not finding that your petitioner was engaged in interstate commerce and that the larger part of the gas being delivered by it to the Johnstown Fuel Supply Company was being transported in interstate commerce and that it was without jurisdiction to compel your petitioner to continue to sell or deliver gas transported in interstate commerce to the Johnstown Fuel Supply Company or to fix the price or rate at which the gas should be so supplied and in not dismissing the petition dated August 27, 1920, and was a violation of Article I, Section 8 of the Constitution of the United States."

The order of the Superior Court entered thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

[fol. 74] Seventh. The Superior Court erred in not sustaining the fourteenth and one-half assignment of error, said assignment being as follows:

"14½. The Commission erred in its order in this case for the reason that the said order deprives the appellant of liberty and property without due process of law, in violation of Clause I of the Fourteenth Amendment to the Constitution of the United States."

The order of the Superior Court entered thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Eighth. The Superior Court erred in not setting aside the order entered by the Commission, which order is as follows:

"This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of [fol. 75] record a report containing its findings of facts and conclusions thereon, which said report is hereby approved and made a part hereof;

'Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of The Public Service Commission dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.'

and in thereby making permanent its interlocutory order of September 13, 1920, viz:

'Now, to wit, September 13, 1920, It is Ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, parties respondent, be and they are hereby severally required and directed to continue the public service rendered by each of them in supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission.'

and thereby compelling your petitioner to continue to supply gas to the Johnstown Fuel Supply Company on and after October 1 1920, on which date the contract between your petitioner and the

Johnstown Fuel Supply Company was terminated by notice of can-
[fol. 76] cellation given in accordance with its terms and as above shown, without fixing the rate or price at which the service was to be rendered or gas furnished from and after October 1, 1920, and as prayed by your petitioner in its petition filed as above shown."

The ground upon which this assignment is founded is that so much of the Act of Assembly of the Commonwealth of Pennsylvania, approved July 26, 1913, the title to which is printed at the end of this assignment of error, and which, as construed and applied by the court, prescribes that the Public Service Commission of the Commonwealth of Pennsylvania has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia and to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company, is invalid on the ground of its being repugnant to Section 8 of Article I of the Constitution of the United States and the laws of the United States made in pursuance thereof, to wit, among others, the Act to regulate commerce, approved February 4, 1887, and the various supplements and amendments thereto.

Title of Act of July 26, 1913, P. L. 1374, Referred to Above

"An Act defining public service companies; and providing for their regulation by prescribing and defining their duties and liabilities; prescribing, defining, and limiting their powers, and regulating their incorporation, and, to a limited extent, regulating [fol. 77] municipal corporations engaged or about to engage in the business of public service companies; creating and establishing a Public Service Commission for the regulation aforesaid; prescribing and defining the powers and duties of such Commission and its officers, including the exclusive power to regulate the construction, alteration, relocation, or abolition of the crossings of railroad corporations, street railway corporations, or other public service companies, and of public highways by the tracks or other facilities of said companies; providing for the ascertainment by the Commission of the expense and damages resulting from such construction, alteration, relocation, or abolition, and for the payment of such expense and damages severally or proportionately, by the public service companies interested, the State, or municipal corporation concerned, and giving persons whose property is thereby taken, injured, or destroyed, authority to sue the Commonwealth for damages in such cases; providing for the terms, salaries and compensation of the members of the commission, its officers, counsel and employes; prescribing and regulating the practice and procedure before such commission, and upon appeal and judicial review of its orders and determinations by the courts of common pleas; and giving the court of common pleas of Dauphin County exclusive jurisdiction of such appeals in certain cases, and of all injunctions, mandamus or

other appropriate proceedings to enforce the provisions of this act and the orders of the commission, and to restrain such orders, subject to an appeal to the Supreme Court; prescribing penalties, fines, and imprisonment for the violation of the provisions of this act and for the violation of the orders of said commission; making it the duty of the Public Service Commission to enforce the provisions of the act approved the nineteenth day of June, one thou- [fol. 78] sand nine hundred and eleven, entitled 'An act to promote the safety of travelers and employes on railroads by compelling common carriers by railroad to properly man their trains,' by amending section nine thereof; repealing the act approved the thirty-first day of May, one thousand nine hundred and seven, which provided for the appointment of the Pennsylvania State Railroad Commission; and sections one and two of the act, approved the fourth day of June, one thousand eight hundred and eighty-three, entitled 'An act to enforce the provisions of the seventeenth article of the Constitution, relative to railroads and canals;' and an act, entitled 'To provide the maximum car service charges, including car storage charges, that railroad companies and corporations, or associations may charge and collect on each car loading and not unloaded within the free time for unloading cars, and fixing the free time that shall be allowed for unloading cars,' approved twenty-fourth day of May, Anno Domini one thousand nine hundred and seven; and the proviso of clause three and the provisos of clause seven of section thirty-four of the act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, and all other legislation inconsistent with or supplied by this act."

Ninth. The Superior Court erred in not setting aside the order entered by the Commission, which order is as follows:

"This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full [fol. 79] investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of facts and conclusions thereon, which said report is hereby approved and made a part hereof;

'Now, to wit, October 3, 1921, it is ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of The Public Service Commission dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.'

and in thereby making permanent its interlocutory order of September 13, 1920, viz.:

'Now, to wit, September 13, 1920, it is ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, parties respondent, be and they are hereby severally required and directed to continue the public service rendered by each of them in supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission.'

and thereby compelling your petitioner to continue to supply gas to [fol. 80] the Johnstown Fuel Supply Company on and after October 1, 1920, on which date the contract between your petitioner and the Johnstown Fuel Supply Company was terminated by notice of cancellation given in accordance with its terms and as above shown, without fixing the rate or price at which the service was to be rendered or gas furnished from and after October 1, 1920, and as prayed by your petitioner in its petition filed as above shown."

The ground upon which this assignment is founded is that so much of the Act of Assembly of the Commonwealth of Pennsylvania, approved July 26, 1913, the title to which is printed at the end of this assignment of error, and which, as construed and applied by the court, prescribes that the Public Service Commission of the Commonwealth of Pennsylvania has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia and to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the Peoples Natural Gas Company of property without due process of law and also denies to it the equal protection of the law.

Title of Act of July 26, 1913, P. L. 1374, Referred to Above

"An Act defining public service companies; and providing for their [fol. 81] regulation by prescribing and defining their duties and liabilities; prescribing, defining, and limiting their powers, and regulating their incorporation, and, to a limited extent, regulating municipal corporations engaged or about to engage in the business of public service companies; creating and establishing a Public Service Commission for the regulation aforesaid; prescribing and defining the powers and duties of such Commission and its officers, including the exclusive power to regulate the construction, alteration, relocation, or abolition of the crossings of railroad corporations, street railway corporations, or other public service companies, and of public highways by the tracks or other facilities of said companies; providing for the ascertainment by the Commission of the expense and damages resulting from such construction, alteration, relocation, or abolition, and for the payment of such expense and damages, severally or proportionately, by the public

service companies interested, the State, or municipal corporation concerned, and giving persons whose property is thereby taken, injured, or destroyed, authority to sue the Commonwealth for damages in such cases; providing for the terms, salaries and compensation of the members of the commission, its officers, counsel and employes; prescribing and regulating the practice and procedure before such commission, and upon appeal and judicial review of its orders and determinations by the courts of common pleas; and giving the court of common pleas of Dauphin County exclusive jurisdiction of such appeals in certain cases, and of all injunctions, mandamus or other appropriate proceedings to enforce the provisions of this act and the orders of the commission, and to restrain such orders, subject to an appeal to the Supreme Court; prescribing penalties, fines, and imprisonment for the violation of the provisions of this act and for the violation of the orders of said com- [fol. 82] mission; making it the duty of the Public Service Commission to enforce the provisions of the act approved the nineteenth day of June, one thousand nine hundred and eleven, entitled 'An act to promote the safety of travelers and employes on railroads by compelling common carriers by railroad to properly man their trains,' by amending section nine thereof; repealing the act approved the thirty-first day of May, one thousand nine hundred and seven, which provided for the appointment of the Pennsylvania State Railroad Commission; and sections one and two of the act, approved the fourth day of June, one thousand eight hundred and eighty-three, entitled 'An act to enforce the provisions of the seventeenth article of the Constitution, relative to railroads and canals;' and an act, entitled 'To provide the maximum car service charges, including car storage charges, that railroad companies and corporations, or associations may charge and collect on each car loading and not unloaded within the free time for unloading cars, and fixing the free time that shall be allowed for unloading cars,' approved twenty-fourth day of May, Anno Domini one thousand nine hundred and seven; and the proviso of clause three and the provisos of clause seven of section thirty-four of the act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, and all other legislation inconsistent with or supplied by this act."

Tenth. The Superior Court erred in not setting aside the order entered by the Commission, which order is as follows:

"This matter being before The Public Service Commission of the [fol. 83] Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of facts and conclusions thereon, which said report is hereby approved and made a part hereof;

'Now, to wit, October 3, 1921, it is ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of The Public Service Commission dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.'

and in thereby making permanent its interlocutory order of September 13, 1920, viz.:

'Now, to wit, September 13, 1920, it is ordered: That the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, parties respondent, be and they are hereby severally required and directed to continue the public service rendered by each of them in supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission.'

[fol. 84] and thereby compelling your petitioner to continue to supply gas to the Johnstown Fuel Supply Company on and after October 1, 1920, on which date the contract between your petitioner and the Johnstown Fuel Supply Company was terminated by notice of cancellation given in accordance with its terms and as above shown, without fixing the rate or price at which the service was to be rendered or gas furnished from and after October 1, 1920, and as prayed by your petitioner in its petition filed as above shown."

The ground upon which this assignment is founded is that so much of the Act of Assembly of the Commonwealth of Pennsylvania, approved July 26, 1913, the title to which is printed at the end of this assignment of error, and which, as construed and applied by the court, prescribes that the Public Service Commission of the Commonwealth of Pennsylvania has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia and to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company is invalid on the ground of its being repugnant to Section 10 of Article I of the Constitution of the United States, which prohibits the states from passing any law impairing the obligation of contracts.

Title of Act of July 26, 1913, P. L. 1374, Referred to Above

"An Act defining public service companies; and providing for their [fol. 85] regulation by prescribing and defining their duties and liabilities; prescribing, defining, and limiting their powers, and regulating their incorporation, and, to a limited extent, regulating municipal corporations engaged or about to engage in the business of public service companies; creating and establishing a Public Service Commission for the regulation aforesaid; prescribing and defining the powers and duties of such Commission and its officers,

including the exclusive power to regulate the construction, alteration, relocation, or abolition of the crossings of railroad corporations, street railway corporations, or other public service companies, and of public highways by the tracks or other facilities of said companies; providing for the ascertainment by the Commission of the expense and damages resulting from such construction, alteration, relocation or abolition, and for the payment of such expense and damages, severally or proportionately, by the public service companies interested, the State, or municipal corporation concerned, and giving persons whose property is thereby taken, injured, or destroyed, authority to sue the Commonwealth for damages in such cases; providing for the terms, salaries and compensation of the members of the commission, its officers, counsel and employes; prescribing and regulating the practice and procedure before such commission, and upon appeal and judicial review of its orders and determinations by the courts of common pleas; and giving the court of common pleas of Dauphin County exclusive jurisdiction of such appeals in certain cases, and of all injunctions, mandamus or other appropriate proceedings to enforce the provisions of this act and the orders of the commission, and to restrain such orders, subject to an appeal to the Supreme Court; prescribing penalties, fines, and imprisonment for the violation of the provisions of this act and for [fol. 86] the violation of the orders of said commission; making it the duty of the Public Service Commission to enforce the provisions of the act approved the nineteenth day of June, one thousand nine hundred and eleven, entitled 'An act to promote the safety of travelers and employes on railroads by compelling common carriers by railroad to properly man their trains,' by amending section nine thereof; repealing the act approved the thirty-first day of May, one thousand nine hundred and seven, which provided for the appointment of the Pennsylvania State Railroad Commission; and sections one and two of the act, approved the fourth day of June, one thousand eight hundred and eighty-three, entitled 'An act to enforce the provisions of the seventeenth article of the Constitution, relative to railroads and canals;' and an act, entitled 'To provide the maximum car service charges, including car storage charges, that railroad companies and corporations, or associations may charge and collect on each car loading and not unloaded within the free time for unloading cars, and fixing the free time that shall be allowed for unloading cars,' approved twenty-fourth day of May, Anno Domini one thousand nine hundred and seven; and the proviso of clause three and the provisos of clause seven of section thirty-four of the act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, and all other legislation inconsistent with or supplied by this act."

Eleventh. The Superior Court erred in not sustaining the fifteenth assignment of error, said assignment being as follows:

"15. The Commission erred in not including in its final order of [fol. 87] October 3, 1921, from which this appeal is taken, a provision fixing the rate or price which the Johnstown Fuel Supply Company should pay your petitioner for gas delivered on and after October 1, 1920."

The order of the Superior Court made thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Twelfth. The Superior Court erred in not sustaining the sixteenth assignment of error, said assignment being as follows:

"16. The Commission erred in not dismissing the original complaint, dated September 13, 1916, and the supplemental complaint, dated September 24, 1917, as to the Peoples Natural Gas Company."

The order of the Superior Court made thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. [fol. 88] We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Thirteenth. The Superior Court erred in not sustaining the seventeenth assignment of error, said assignment being as follows:

"17. The Commission erred in not dismissing the complaint dated August 20, 1920, as to the Peoples Natural Gas Company."

The order of the Superior Court made thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Fourteenth. The Superior Court erred in not sustaining the eighteenth assignment of error, said assignment being as follows:

"18. The Commission erred in not dismissing the petition dated [fols. 89 & 90] August 27, 1920, as to the Peoples Natural Gas Company."

The order of the Superior Court made thereon is as follows:

"We are not now called upon to decide whether if appellant had made application to the commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

[fol. 91] IN SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

No. 19, October Term, 1923

THE PEOPLES NATURAL GAS COMPANY, Appellant,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA et al., Appellees

THE PEOPLES NATURAL GAS COMPANY, Appellant,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA et al., Appellees

Appeals from the judgments of the Superior Court of Pennsylvania at Nos. 107 and 108, April Term, 1922. In these cases the Superior Court affirmed the orders of the Public Service Commission of Pennsylvania in proceedings at Nos. 1098 and 1083 Complaint Docket, 1916

OPINION BY MR. JUSTICE SIMPSON—Filed February 4, 1924

SIMPSON, J.:

The Peoples Natural Gas Company (hereinafter called the Peoples Company) was chartered by this Commonwealth, under the pro- [fol. 92] visions of the Natural Gas Act of May 29th, 1885, P. L. 29, for the purpose of dealing in, transporting and supplying natural gas to the public, and was authorized (subject to obtaining municipal consent to the occupancy of the streets) to furnish it in a large number of municipalities of this State, among them, by an amendment to the charter, being the city of Johnstown.

At the time the Public Service Company Law of July 26th, 1913, P. L. 1374, went into effect, and during the entire period covered by this litigation, the Peoples Company purchased much of the gas it needed from the Hope Natural Gas Company of West Virginia, (a "separate and independent" corporation, hereinafter called the Hope Company) which piped it from wells in that State to a point on the line between the States of Pennsylvania and West Virginia, and there delivered into the pipe line of appellant, which had no title to or interest in the gas until it passed into Pennsylvania, the Hope Company having none thereafter. In the petitions and answers filed by appellant, it is repeatedly stated that the gas was furnished because of a contract between the two companies, the terms of which were not disclosed, however, the only evidence on the point being that the gas was purchased "in West Virginia, at the West Virginia State line, by meter measurement."

The pipe line of the Peoples Company, containing the gas thus purchased, was connected, at various points in this State, with other pipe lines, carrying gas obtained from its Pennsylvania wells, and part of the combined gas was delivered by it to consumers in a large [fol. 93] number of municipalities of the State, before reaching a point opposite the city of Johnstown. In order that gas might be supplied to users in that city, appellant entered into a contract with the Johnstown Fuel Supply Company (hereinafter called the Johnstown Company, which was also chartered under the Natural Gas Act of 1885, and had municipal consent to the use of the streets), by virtue of which appellant expressly agreed to and thereafter did construct a spur from its main line to a point near the city, and there connected with the line of the Johnstown Company, through which gas was delivered to consumers in that city, appellant receiving, as consideration for the gas so furnished, certain percentages of the amounts paid by the consumers. It subsequently continued its pipe line beyond Johnstown, and since then has supplied private consumers in certain municipalities reached by this extension. None of its gas is sent out of the State of Pennsylvania.

On July 15th, 1916, the Johnstown Company filed a new tariff, increasing its rates; objections were made thereto, and it appearing to the Public Service Commission that one of the causes, partly relied on as justifying the increase, was the price payable to the Peoples Company, under the contract above referred to, the Commission directed that the latter company be cited and an opportunity given it to be heard. It answered, denying the jurisdiction of the Commission, claiming that performance of the contract with the Johnstown Company was not a public service, and also because until actual delivery, the gas was in interstate commerce, and not subject to state regulation. Evidence was taken, and later appellant moved to dismiss the proceedings against it, for the reasons set forth in its origi- [fol. 94] nal answer. The Commission overruled the motion, and directed appellant to file a tariff of rates. Instead of doing this, it appealed to the Superior Court (sub. nom. Franke v. Johnstown Fuel Supply Co., 70 Pa. Superior Ct., 446), which affirmed the order of the Commission. An appeal, then taken to this Court, was dis-

missed, solely because the order complained of was interlocutory, and, standing alone, was not the subject of an appeal: Peoples Natural Gas Company vs. Public Service Commission, 268 Pa., 235.

In the meantime, pending our decision as above, appellant duly cancelled its contract with the Johnstown Company, effective as of October 1st, 1920, and gave notice of its intention to deliver no more gas after that date. Before that time arrived, however, appellant complied with the order of the Commission, by filing a tariff as between it and the Johnstown Company, specifying therein the rates named in the contract, and adding that service would be discontinued in accordance with hte notice above mentioned.

On September 1st, 1920, the Mayor of Johnstown, as an individual consumer of gas and as the representative of the citizens generally, filed with the Commission a petition against both the Johnstown Company and the Peoples Company, asking that the latter be required to continue the supply of gas to the former, despite said notice. The former answered, joining in the prayer of the petition. The latter also answered, renewing its objections to the jurisdiction of the Commission, averred that it, appellant, had a right to discontinue the service, and that a steady decrease in its supply of gas compelled [fol. 95] it to do so, because of its alleged paramount duty to private consumers in municipalities where it furnished gas to them directly. A hearing was had, and an interlocutory order made requiring appellant, until further order of the Commission, to continue supplying gas to the Johnstown Company, for use by consumers in that city.

On January 27th, 1921, appellant filed in the office of the Secretary of the Commonwealth a paper certifying that, by proper corporate action, taken in accordance with section 5 of the Natural Gas Act, it had altered its territory for the supply of natural gas, by eliminating the city of Johnstown therefrom; and, based upon this action, and its objections to the jurisdiction of the Commission, it filed with the later a petition for the vacation of the interlocutory restraining order. The Johnstown Company made answer, and in turn applied to the Commission to fix the rates to be paid by it to appellant, pendente lite. Testimony was taken on these various applications, a hearing had, and the Commission decided that, under the Public Service Company Law, appellant could not limit its field of service without the consent of the Commission, which had neither been asked nor granted. It therefore directed the supply to be continued until such consent was obtained, but gave appellant leave to file a new tariff.

From this decision, the Peoples Company appealed to the Superior Court, which affirmed the order of the Commission (Peoples Natural Gas Co. vs. Public Service Commission 79 Pa. Superior Ct., 560); and from that decree the present appeal was allowed. In this Court [fol. 96] the argument took a far wider range than the exigency of the case warrants. If appellant had no right, under our statutes, to curtail its field of service and refuse to deliver gas in a part thereof, without first obtaining the consent of the Commission, then the decree must be affirmed, unless it conflicts with appellant's rights under

the Constitution of the United States, or Acts of Congress passed in pursuance thereof.

The first point made by appellant is that, under section 10 of the Natural Gas Act, natural gas companies are only required to furnish natural gas "to consumers along their lines and within their respective districts"; and, since the Johnstown Company is not a "consumer," and the consumers in Johnstown are not "along their [appellant's] lines," although "within their respective districts," it has no charter obligation to either, and the termination of the contract between the two companies put an end to all other possible claims upon it. Much might be said in support of the contention that appellant's action in building the spur to a point just outside of Johnstown, and there connecting with the lines of the Johnstown Company, for the sole purpose of supplying consumers in that city, (which was within appellant's field of service), in legal effect placed these consumers on appellant's line of service. We prefer, however, to more broadly ground our decision upon this point.

The Public Service Company Law makes no distinction between wholesale and retail service, or between direct and indirect service, [fol. 97] or between service which is required and that which is only authorized. On the contrary it says, in article I, section 1, that "The word 'service' is used in this act in its broadest and most inclusive sense," particularly specifying therein certain things which are to be included within the meaning of the general language used, but not expressly or impliedly excluding any others; and thereafter makes all kinds of service subject to regulation by the Commission. When that law went into effect, appellant and the Johnstown Company were each authorized by charter to serve consumers in Johnstown, the actual service being furnished indirectly by appellant and directly by the Johnstown Company, under an arrangement which was peculiarly within the remedial purpose of the statute, for that plan ensured the service and at the same time avoided possible ruinous competition between the two companies, which, if it arose, was certain to result in injury to both of them, and to the public also. Any change in that service, in the way now attempted, would necessarily have the effect of seriously injuring those consumers. To prevent all such wrongs, the Commission is given express power to hear and determine, subject to review, all complaints in regard to them: Article VI, sections 6 and 7.

Without further elaboration, we add that we fully agree with the following extracts from the opinion of the Superior Court, in the instant case: "Article I, section 1 of the Public Service Company Law expressly provides that the term 'Public Service Company,' when used in the act, shall include all natural gas companies * * *. It may be broadly stated that every public service company, while performing any service authorized by its charter, is engaged in public service within the meaning of the Public Service [fol. 98] Company Law, and subject to the supervision and regulation of the Public Service Commission, so far as the State may lawfully supervise and regulate its operations. * * * that the act is broad enough in its grant of authority to the Commission to cover

the present situation; the broad general powers given the Commission apply to any alteration of territory of production or supply, and are not limited to such only as extend or increase such territory." In order to avoid a possible misunderstanding, we should perhaps add that the power of the Public Service Commission, in respect to this matter, is limited to the regulation of public service companies which intend to continue in business, and it has not the right to determine whether they shall be permitted to surrender their charter powers and retire from business; the court of common pleas decides this, upon application under the Act of April 9th, 1856, P. L. 293: New York and Penna. Railway Co. vs. The Public Service Commission, 72 Pa. Super. Ct., 523.

As antagonizing our conclusion on the point now being considered, appellant contends that section 5 of the Natural Gas Act, as construed in Germania Refiining Co. vs. Alum Rock Gas Co., 226 Pa., 433, gives to it the absolute right to curtail its field of service when and as it pleases, and that this has been preserved to it by article III, section 12, of the Public Service Company Law. The second part of this contention cannot possibly be sustained however. The section referred to provides that "Every public service company shall be entitled to the full enjoyment and exercise of all and every the rights, powers, and privileges which it lawfully possesses, or might [fol. 99] possess, at the time of the passage of this act, except as herein otherwise expressly provided." Under this last clause, appellant claims that the effect of the word "expressly" is that unless the Public Service Company Law contains a direct reference to and repeal of the particular right, power or privilege, which a public service company had theretofore enjoyed, whether given by a special or general statute, such right, power or privilege must be held to be still existing, and hence that section 5 of the Act of 1885 remains in force, since it is not thus directly referred to and repealed.

The difficulty with this contention is that it would emasculate the statute, is in direct conflict with certain of its provisions, and would make it meaningless so far as relates to service by natural gas companies. Upon this point we cannot do better than to again quote from the opinion of the Superior Court: "We have already pointed out that natural gas companies are expressly included within the public service companies governed by the act. The act provides that all such companies shall 'furnish and maintain such service, including facilities, as shall in all respects be just, reasonably adequate, and practically sufficient for the accommodation and safety of its patrons, employees and the public, and in conformity with such reasonable regulations or orders as may be made by the Commission,' (Art. II, sec. 1a), and forbids undue or unreasonable discrimination between localities (Art. III, Sec. 8b). The terms 'service' and 'facilities' as thus employed in the act are used in their 'broadest and most inclusive sense' (Art. I, Sec. 1). The act grants power and authority to the Commission generally to supervise and [fol. 100] regulate all public service companies doing business within the Commonwealth (Art. V, Sec. 1); to determine, specify and order the just, reasonable * * * and sufficient service, fa-

cilities, rules, regulations or practices to be put in force, observed, rendered, used or furnished by public service companies in the performance of their public duties, (Art. V, Sec. 2), and provides that the enumeration of special powers granted the Commission in the Act shall not exclude any power possessed by it under its general grant (Art. V, Sec. 28). It provides that the Commission must approve and issue its certificate of public convenience before such public service company can be incorporated, organized or created (Art. III, Sec. 2a), or begin the exercise of any right, power, franchise or privilege under any ordinance or municipal contract (Art. III, Sec. 2b). Without the approval of the Commission a public service company may not lawfully renew its charter or obtain any additional rights, powers, franchises or privileges by amendment or supplement to its charter, or otherwise (Art. III, Sec. 3a); or sell, assign, transfer, lease, consolidate or merge its property, powers, franchises or privileges to or with any other corporation, or person (Art. III, Sec. 3c). In short, the Commission's powers of supervision and regulation are of the broadest and most comprehensive character and it is difficult to conceive of any subject of interstate service, facilities, or rates not within its scope and authority."

Probably in every special Act of Assembly, incorporating a public service company prior to the Constitution of 1873, and in many, if not most or all, of the general Acts, providing for their incorpora- [fol. 101] tion since that date, there will be found granted some "rights, powers or privileges" relating to rates or service. None of these "particular rights, powers or privileges" are referred to in the Public Service Company Law, although the manner for determining what shall be done in regard to the rates and service of all public service companies, is therein set forth in minute detail, and although also section 51 of the statute provides that "all other acts or parts of acts, inconsistent herewith or supplied hereby, be, and the same are also hereby repealed."

It is unthinkable that the legislature, which was seeking to regulate the rates and service of all such companies, for the benefit of them and of the public alike, should have left wide open the door of escape from the very thing it was so minutely and carefully attempting to accomplish. Such a conclusion is not permissible if some other meaning can reasonably be given to the language now being construed. Happily this is not difficult to do. If the particular words referred to are held to relate to subject "expressly" dealt with in the act, every part of it would become consistent with every other part, and the clause would be interpreted as if it read: "Every public service company shall be entitled to the full enjoyment and exercise of all and every the rights, powers and privileges, which it lawfully posses, or might possess, at the time of the passage of this act, except as [those matters are] herein otherwise expressly provided" for. This, we decide, is its true construction.

If any other conclusion were reached, the result would be, as the Superior Court well says in its opinion: "If a natural gas company [fol. 102] retains the arbitrary power to punish a community which has the hardihood to question any of its rates, regulations, or prac-

tices, by cutting it out of its field of supply and refusing to furnish it any gas at all; if it may evade the orders of the Commission relative to its service at a particular place by eliminating that place from its field of operations; the legislature might just as well not have declared such corporations subject to supervision and regulation by the Commission. We cannot agree to such a proposition." To this we may add, that, if we held otherwise than as here ruled, "the scandals growing out of favored terms being given to friends of the management, would be revived, although it was the intent of the Public Service Company Law to cut up by the roots all such possibilities": Duquesne Light Co. vs. Public Service Commission, 273 Pa., 287, 298. As already suggested, the statute is very clearly intended to prevent this, for it says in article III, section 8 that "It shall be unlawful for any public service company * * * (b) To make or give any undue or unreasonable preference or advantage in favor of or to * * * any locality * * * in any respect whatsoever; or to subject any particular * * * locality * * * to any undue or unreasonable prejudice or advantage in any respect whatsoever."

What we have said above leaves open only the Federal questions raised, the first of which (slightly referred to in appellant's brief, but now pressed at the oral argument), is that the decrees below violated the due process clause of the 14th Amendment, in that it made no provision for payment to appellant, for the gas actually furnished to the Johnstown Company; and the second, that it impaired the obligation of the contract between the two companies. [fol. 103] As to the former contention, it is sufficient to say that the only reason payment has not been provided for, is because appellant has not chosen to press to a hearing, and final determination, the questions raised regarding the tariff of rates filed by it, in accordance with the permission given in the order appealed from; nor has it asked, as it might have done, for an order for payment or security pending the finel decision. (Suburban Water Co. vs. Oakmont Borough, 268 Pa., 243, 255), but has apparently preferred to depend on the result of an undetermined suit which it has brought against the Johnstown Company. As to the second of those contentions, it is unnecessary to quote the numerous decisions holding that the constitutional provision as to the impairment of contracts does not prevent proper State regulation of the rates and service of public service companies. It may be said, however, that we agree with appellant that there is now no contract to be violated, and add that the decision here made is wholly irrespective of the terms of its former contract with the Johnstown Company.

But we are further told, and upon this great stress is laid, that the gas is in interstate commerce during the entire period of its ownership by appellant, and for this reason cannot be subjected to state regulation until after it has passed, with appellant's consent, into the possession of the Johnstown Company. If this claim is sound, appellant can even refuse, when and as it chooses, to permit gas to pass into the local mains of each and every one of the 78 municipalities it serves, and escape all regulation as to them also, since

Congress has not attempted to regulate the distribution of natural gas, and being in interstate commerce, any and every state attempt so [fol. 104] to do must fail. This is a startling proposition; for, while public service companies have always been subject to just and reasonable regulation by the State which charters them, and in which they are to perform the duties and exercise the powers thereby granted, yet, if the present claim be correct, appellant and all others in like situation, (1) may free themselves from all regulation by the simple device of mingling the gas produced here with that purchased in another State, the combined quantity being needed to enable it to comply with its charter obligations to citizens of this State, (2) may thus discriminate against consumers in such localities as it chooses, and (3) though retaining all the powers granted to it, may escape compliance with the obligations which were the considera[illegible] for the grant. If the Constitution of the United States so provides, of course it must be obeyed, however incongruous and harmful the result may be. The presumptions are all against such a contention, however, and happily it is demonstrably erroneous, so far, at least, as relates to the present situation.

As already pointed out, the only evidence regarding appellant's acquisition of gas outside of Pennsylvania, is that it was purchased "in West Virginia, at the West Virginia State line, by meter measurement." Exactly what this means is not clear, and the burden of making it so was upon appellant, which is seeking thereby to obtain immunity from a just regulation by the State of its incorporation. It certainly can mean no more than that the gas was bought in West Virginia, for delivery at the State line, the quantity to be there ascertained by meter measurement. This being so, the interstate shipment ended at that line, where the parties originally [fol. 105] intnded it should end, and appellant's only other right, under the interstate commerce clause, was to there sell the article in bulk: Illinois Central R. R. Co. vs. Feuntes, 236 U. S., 157, 163; Western Union Telegraph Co. vs. Foster, 247 U. S., 105, 113.

No authority sugests, and no principle calls upon us to say, that an entire State is the destination of an article shipped to a point therein, and that a purchaser has the right to carry it far beyond the place where the interstate shipment in fact ended, and sell it in instalments, considering it as if still in interstate commerce, in each of 78 different localities. The exemption from state regulation being limited as stated, it necessarily follows, that, under the only contract which we are advised existed as to the gas obtained from the Hope Company, its interstate character ended at the State line and thereafter it was wholly intrastate; and this is, in effect, the principle decided in Gulf, Colorado & Santa Fe Railway Co. vs. Texas, 204 U. S., 403; Chicago, Milwaukee & St. Paul Railway Co. vs. State of Iowa, 233 U. S., 334, and the cases in their train.

We need not further elaborate this thought, however, for, whether or not the gas continued in interstate commerce, it was, nevertheless, so far as concerns its distribution in Pennsylvania, subject to the reasonable regulatory power of the State. As was said in Pennsylvania Gas Co. vs. Public Service Commission of New York, 252 U.

S., 23, 30-31, where admittedly the gas was in interstate commerce: "The rates of gas companies transmitting gas in interstate commerce are not only not regulated by Congress, but the Interstate Commerce [fol. 106] Act expressly withholds the subject from Federal control, C. 309, §7, 36 Stat. at L. 539, 544. The thing which the State Commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, and pertains to the furnishing of natural gas to local consumers within the City of Jamestown in the State of New York. The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the State; nevertheless the service rendered is essentially local. * * * While the manner in which the business is conducted is part of interstate commerce, its regulation, in the distribution of gas to the local consumers, it required in the public interest, and has not been attempted under the superior authority of Congress * * * [hence] until the subject matter is regulated by congressional action, the exercise of authority conferred by the State upon its Public Service Commission is not violative of the commerce clause of the Federal Constitution.

Appellant admits that, under that decision, its distribution of gas to the 78 municipalities it directly serves, is subject to reasonable regulation by the Commission; but, denies this as to the service for the benefit of the citizens of Johnstown, as we think illogically, since the general language of the opinion and of the Act alike cover all kinds of just and equal regulation. Appellant's attempted distinction seems to be based upon the use of the words "gate of the city," "local mains," and "burner tips," in certain other decisions under this clause of the Federal statute. None of these terms appear, however, in Pennsylvania Gas Co. vs. Public Service Commission of New York, supra, possibly because they find no place in the letter or spirit [fol. 107] of the Act of Congress, but certainly because, if the facts were stated, the decision itself would antagonize the argument attempted to be made from them. That was a rate case, in which the utility was engaged in supplying interstate gas not only to consumers in the city of Jamestown, but also to those in the town of Ellicott and the village of Falconer in the State of New York, as well as to others in the cities of Warren, Corry and Erie in the State of Pennsylvania. In order to decide what would be a fair rate in Jamestown, necessarily the service in the other places, and the proper rates to be charged to consumers therein, would also have to be determined. It follows that the regulation could not properly have been limited to a consideration of the rates which would have been required for the gas which passed the "gate of the city" of Jamestown, or entered its "local mains" or was consumed at its "burner tips" only, as would have been the case if that city alone had been served by the natural gas company. Necessarily, therefore, the affirmance of the right of regulation there, carried with it, in principle at least, all that is decided in the present case.

It is only when we carefully read the language of the other opinions, where the words "gate of the city," "local mains," and "burner tips" are used, that we understand their significance as simply stating the place where, in each particular instance, the right of regulation

actually began. Such an investigation will also show, however, that none of these authorities even suggest that, under a different state of facts, the right could nevertheless only begin at one or the other of the places named. The instances must be exceedingly rare where a word or phrase from an opinion will be held to control the meaning [fol. 108] of a statute, which, as in the present instance, does not use the word or phrase. When Congress excluded natural gas from the purview of the Interstate Commerce Act, without in any way limiting the exception, it could only have meant that, in matters of distribution, the State's power of equal and just regulation should continue to exist, even though the gas was produced from wells outside the State, and was carried into it in interstate commerce; and, since Congress has not limited the right to retail distribution alone, that the State's power of regulation may justly and properly be applied to all kinds of distribution, in places where the utility was authorized to serve individual consumers, even though, as here, it adopted an indirect method of doing so, because that course benefitted it, by enabling it to avoid ruinous competition with a rival corporation, then fully equipped for the service, and having equal rights in the territory.

It is true that in the Jamestown case, the utility did not seek, as appellant does, to discriminate against all of the consumers in a particular locality, in favor of all those in other places; but this is an unimportant difference. It is inconceivable that Congress should have deliberately left to the States the general power to regulate distribution by natural gas companies, though engaged in interstate commerce, and yet have meant this to be restricted to their dealings with individual consumers, leaving in full force the power, at least equally harmful, to discriminate against all of the users in certain localities. Before regulation began, this great wrong not infrequently resulted from the action of public service companies, destruction of [fol. 109] it was one of the purposes for which public service company laws were passed. Of course, Congress could have permitted State regulation as to certain of the evils which existed, and have refused it as to others, though the latter were equally harmful to the public. It has not done so, however; on the contrary, it has left to the States themselves the matter of making all necessary regulations, subject always to an appeal to the courts. Not otherwise can the intention of Congress in exempting natural gas from the provisions of the Interstate Commerce Act, be given its only reasonable effect. It follows that the place where the gas was found is unimportant; that the power to require appellant to continue this service is unaffected by the question as to whether or not the gas was in interstate commerce when it reached the "gate of the city" of Johnstown; and hence this contention must also be overruled.

The same conclusion is reached when the matter is viewed from another standpoint. If we keep steadily in mind exactly what the subject matter of this appeal is, it will readily be seen that the orders of the Commission, now being considered, could not be held to contravene, directly or indirectly, the interstate commerce clause of the Federal Constitution, even if Congress had not excluded natural

gas from the provisions of the Interstate Commerce Act. Appellant is a Pennsylvania corporation, authorized by its charter to supply such gas to the citizens in given localities. Whether it is furnished because of a duty so to do, or because of authority contained in the charter, the citizens are equally interested in receiving it, and the State's only concern is that they shall all be treated alike. For many [fol. 110] years appellant has been supplying gas to the Johnstown Company, on what it is pleased to term a wholesale basis, without regard to where the commodity came from. It did this knowing there was no other visible or probable source of supply, and knowing also that the citizens of Johnstown (as in fact was the case) would rearrange their mode of life, and would go to considerable expense in adjusting their homes to the new system. Solely for the purpose of making the connection with the Johnstown Company's pipes, appellant exercised the right of eminent domain given to it by the State, declaring it did so in order that those citizens might receive the gas it had to supply. As already stated, both before and after reaching Johnstown, it directly served, at retail, the consumers in seventy-five other municipalities. Under such circumstances, it is not unfair to say that the service to the Johnstown Company should be placed in the same class as that to any large retail purchaser, and hence appellant should not be permitted to arbitrarily abandon the service, to the great injury of the citizens who acted on the faith of its continued compliance with the obligations of its charter, solely because it chooses to buy some of the gas produced from wells outside the State. This is especially so since it has ample gas obtained from wells in the State, to enable it to comply fully with the orders of the Commission, and no attempt is being made to deprive it of a full and adequate return for the service. Appellant's claim is, therefore, that it may exercise all the rights given to it by the State, and yet avoid the obligations imposed as a condition of their grant, although, so far as now appears, it is not and cannot be injured by the State's order [fol. 111] to file a schedule of rates, and continue its public duties pendente lite. It might, of course, escape compliance, if its interstate business, assuming it has such, would be unduly burdened by the State's requirements. It cannot, however, where, as here, the only effect is to prevent discrimination against certain localities in favor of others, to insure against which possibility appellant is simply required, (subject to a later judicial review of all relevant questions of law and fact, whenever it so demands), to submit to an appropriate tribunal of the State, the question of where, if at all, service may be discontinued. The effect which such a regulation has upon interstate commerce, if indeed it can be said to have any, is as purely incidental as anything can well be conceived to be. If the continued compliance with its duties as defined by the law of the State of its incorporation, might (we do not say it does) indirectly affect a commodity received from outside the State, that is purely a matter of corporate management or control, and is no more beyond the State's power than would be an order upon a lighting or heating company to comply with its duty of indiscriminate service, though, the coal or oil used by it was obtained in another State. In neither event

could the utility be heard to say: "We cannot comply with our charter obligations, except by obtaining the fuel in interstate commerce, and if we do you cannot regulate it, and hence, because of this, you can not require us to comply with your order." A complete answer is: "We do not say you must obtain fuel in interstate commerce; this you may do or not, as you please; but we do say that you must comply with the requirements of your charter, and serve the public justly and without discrimination, or you must surrender the powers conferred upon you by the State."

[fol. 112] The enforcing of a corporation's duty, under such circumstances, affects interstate commerce only indirectly and remotely, and is not forbidden by the Federal Constitution. "Legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit": Smith vs. Alabama, 124 U. S., 465, 473; Pittsburgh and Southern Coal Co. vs. Louisiana, 156 U. S., 590. If the effect of the State's action was to discriminate in any degree against articles in interstate commerce, a far different question would arise. Here, however, it only prevents discrimination, and this may be done, even to the extent of taxing articles in the State, still in interstate commerce, although the effect of so doing is necessarily to burden that commerce, if it does not do so either unduly nor unreasonably. A long line of cases from Woodruff vs. Parham, 75 U. S., 123, to Sonneborn Bros. vs. Keeling, 43 Sup. Ct. Reporter, 642, so holds; a fortiori the conclusion must be the same where the effect is not to burden interstate commerce at all, or even to injuriously affect it in any degree.

The importance of the questions involved, the able differing opinions in the Superior Court, and the learned and elaborate argument of counsel for appellant, must be the excuse for the length of this opinion, which perhaps, could have been greatly abbreviated had it been limited to the narrow point upon which the decision of [fol. 113] the Commission was made to turn. As already stated, it has not been decreed that appellant may not be exempted from supplying gas for the benefit of the citizens of Johnstown, while still furnishing it to those in other localities, but only that it must first apply to the Public Service Commission for leave so to do, in order that there may be a public determination as to its rights in this respect. Its contention in effect is, therefore, that although it is a public service company, incorporated by this Commonwealth, and, by virtue of the authority contained in its charter, sinks wells in this State and obtains from them more than enough gas to supply all the consumers in Johnstown, yet no public authority can be allowed to consider its rights to discontinue this production and supply, because, and because only, it also purchases gas in other States, under authority of the same charter, and for convenience in general distribution, mixes the two volumes of gas and carries them in a single pipe line. That is, because it chooses to mingle the two streams of

gas it can, solely, by this act of its own, wholly defeat the State's power of regulation of the gas obtained from wells in the State. This of course cannot be. If it should become necessary to separate the streams, in order to obey the commands of the State, appellant would have to do this, the interstate commerce gas, if it is such, being more than sufficient to supply its consumers in all other places than Johnstown. This also is, therefore, merely a matter of corporate management or control in apportioning the supply. That so doing would result in making its present rates inadequate, is not a matter with which we are now concerned; it can only arise when a new tariff is filed.

[fol. 114] The other contentions made by the parties have not been overlooked, but they have become unimportant in view of our conclusions above stated. In order to avoid misapprehension, however, we should add that we do not decide the order complained of is so far final as to be the proper basis for an appeal. If we had quashed the appeal for this reason, as it was argued we should do, the only effect would have been to postpone until after final decree, the consideration of the questions herein decided. Hence, since we agree with appellee on the merits, and are admonished by the fundamental law that litigants are entitled to "justice without * * * delay," we have deemed it best to shorten, as far as may be, future proceedings in this long drawn out litigation.

The decrees of the Superior Court are affirmed and the appeals are dismissed at the cost of appellant.

[fol. 115] IN SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRITS OF ERROR

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of Pennylvania:

The petition of The Peoples Natural Gas Company respectfully represents:

First. Your petitioner is a corporation of the Commonwealth of Pennsylvania, incorporated under the Natural Gas Act of May 29, 1885, P. L. 29.

Second. In proceedings before The Public Service Commission of the Commonwealth of Pennsylvania at Nos. 1098 and 1083 Complaint Docket, 1916, orders were entered by the Commission on October 3, 1921, directing your petitioner to continue to supply natural gas and service incident thereto to the Johnstown Fuel Supply Company for distribution in the City of Johnstown (Brief for appellant in these cases, pages 42 and 43). From these orders appeals were prosecuted by your petitioner to the Superior Court of Pennsylvania at Nos. 107 and 108 April Term, 1922. The Superior Court of Pennsylvania affirmed said orders of the Commission and

dismissed the appeals. From said decision of the Superior Court appeals were allowed and duly prosecuted in this Court, and this Court on the 4th day of February, 1924, made a final disposition of these cases by overruling and dismissing all the assignments of error, and affirming the decrees of the Superior Court and dismissing the appeals at the cost of the appellant. A copy of the opinion of this Court, by Mr. Justice Simpson, is attached hereto and marked Exhibit "A."

[fol. 116] Third. This petition is accompanied by the assignments of error in this Court in these cases, which raise the Federal questions, marked Exhibit "B."

Fourth. This petition is accompanied by assignments of the error alleged to have been committed by this Court and by a prayer for reversal, which are marked Exhibit "C."

Fifth. This petition is accompanied by a motion for reargument of these cases, which is marked Exhibit "D."

Sixth. This petition is accompanied by a brief in support of this petition and of said motion for reargument, which is marked Exhibit "E."

Seventh. The statute of the State of Pennsylvania, the validity of which (as construed by this Court and by the Superior Court, and under which authority was exercised by The Public Service Commission in making the orders complained of in these cases) is drawn in question on the ground of its being repugnant to the Constitution and laws of the United States, is the Act of the General Assembly of the Commonwealth of Pennsylvania approved the 26th day of July, 1913, P. L. 1374, known as "The Public Service Company Law" of Pennsylvania. The said Statute and said orders of the Public Service Commission are drawn in question, for the reason that the said Act as construed by this Court authorizes the orders of the Public Service Commission complained of, which orders compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into [fol. 117] Pennsylvania from the State of West Virginia, and authorizes the Public Service Commission of Pennsylvania to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company. Said Statute and orders are invalid on the ground of their being repugnant to section 8, Article I, of the Constitution of the United States and the laws of the United States made in pursuance thereof, to-wit, among others the Act to regulate commerce approved February 4, 1887, and the various supplements and amendments thereto. Said orders are invalid also because they deprive the Peoples Natural Gas Company of property without due process of law and deny to it the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States. And said orders are invalid because they are repugnant to section 10 of Article I of the Constitution of the United States, which prohibits a state from passing any law impairing the obligation of contracts.

Eighth. All the foregoing questions were clearly raised in these cases prior to the final decision of this court. They were raised in your Honorable Court by the 6th, 7th, 8th, 9th and 10th assignments of error. They were raised in the Superior Court by assignments of error numbered 14 and 14½. They were raised before The Public Service Commission by the answer of the respondent filed September 20, 1917, (Record page 771 a); by the answer of the Peoples Natural Gas Company filed with the Commission on October 4, 1917 (Record, Vol. II, pp. 783 a, 784 a); and by the additional answer of the Peoples Natural Gas Company filed on Sep-
[fol. 118] tember 14, 1920 (Record, Vol. II, pp. 842 a, 847 a).

Ninth. The decree entered in this court in each of these cases is a final judgment or decree in a suit in the highest court of the state in which a decision in the suit can be had, and is one where the validity of a statute of the State of Pennsylvania and of the authority exercised under a statute of the State of Pennsylvania is drawn in question on the ground that said state statute and the authority exercised by the state officials under the state statute are repugnant to the Constitution and laws of the United States; and the decisions of this Court and of the Superior Court and of the Public Service Commission were in favor of the validity of said state statue and the authority exercised thereunder.

Tenth. These are cases which may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error under the provisions of section 237 of the Judicial Code.

Eleventh. The Federal question involved in each of these cases is whether The Public Service Company Law as construed by the Commission, by the Court below, and by this Court to confer authority upon the Public Service Commission to make the orders which it made, does not violate the Constitution of the United States.

Wherefore your petitioner averring that the claims of Federal right herein mentioned were duly raised and insisted upon on the record before The Public Service Commission of Pennsylvania, in the Su-
[fol. 119] perior Court of Pennsylvania, and in the Supreme Court of Pennsylvania, respectfully prays that a writ of error may issue, and that it may be allowed to bring up for review before the Supreme Court of the United States the said judgment of the Supreme Court of Pennsylvania, and that your petitioner may have such other and further relief in the premises as may be just.

And your petitioner will ever pray, etc.

The Peoples Natural Gas Company, by John B. Tonkin, Vice President. George B. Gordon, Arthur E. Young, Allen T. C. Gordon, S. G. Nolin, Attorneys for Petitioner.

[fol. 120] STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, a notary public in and for said State and County, personally appeared John B. Tonkin, who

being by me duly sworn according to law deposes and says that he is the Vice President of the petitioner and its agent in this behalf, and that the averments contained in the foregoing petition are true and correct to the best of his knowledge and belief.

John B. Tonkin.

Sworn to and subscribed before me this 20th day of March, 1924. Harvey Rankin, Notary Public. My commission expires Jan. 19, 1925.

[fol. 121] EXHIBIT "D" TO PETITION

Motion for Reargument in the Supreme Court of Pennsylvania

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of Pennsylvania:

The petition of the Peoples Natural Gas Company, a corporation of the State of Pennsylvania, respectfully represents:

First. That on the 4th day of February, 1924, this court made a final disposition of these cases by overruling and dismissing all the assignments of error, affirming the decrees of the Superior Court and dismissing the appeals at the cost of appellant. A copy of the opinion of the court by Mr. Justice Simpson is bound under the same cover as this petition and precedes it, being marked Exhibit "A."

Second. This motion for a reargument is accompanied by a petition for the allowance of a writ of error from the Supreme Court of the United States.

Third. Your petitioner respectfully suggests that in view of the importance of the Federal questions involved in these cases a reargument should be granted upon said Federal questions.

Fourth. Your petition respectfully suggests that the decision of the Federal questions which was made by this court is based upon misapprehension of the facts in the cases, as is more fully shown in the brief accompanying this petition.

[fol. 122] Fifth. Your petitioner respectfully suggests that the reasons for the decision in these cases stated in the opinion of the court are based upon a misapprehension as to the finality of the order issued by the Public Service Commission, which is the basis of the assignments of error, and also upon a misapprehension of the questions which were presented to the Commission and explicitly decided by it.

Sixth. Accompanying this petition are copies of all briefs used in the argument of these cases and also a copy of the record in said cases.

Wherefore, your petitioner prays that a reargument of these cases may be ordered.

And your petitioner will ever pray, etc.

Peoples Natural Gas Company, by John B. Tonkin, Vice President. George B. Gordon, Arthur E. Young, Allen T. C. Gordon, S. G. Nolin, Attorneys for Petitioner.

[fol. 123] In Supreme Court of Pennsylvania, Western District

19

The Peoples Natural Gas Company, Appellant,

v.

The Public Service Commission of the Commonwealth of Pennsylvania

Appeal from Judgment of Superior Court of Pennsylvania, at No. 107, April Term, 1922

Docket Entries

For appellant: Arthur E. Young, Gordon & Smith.

For Commission: Frank M. Hunter, John Fox Weiss.

November 8, 1922.—Appeal allowed.
November 8, 1922.—Appeal and affidavit filed and Writ exit.
November 8, 1922.—Præcipe for Supplement al Certiorari filed.
November 8, 1922.—Supplemental Certiorari exit.
November 10, 1922.—Record filed.
January 17, 1923.—Transferred to Eastern District.
March 31, 1923.—Assignments filed.

Order

And now, to wit, May 14, 1923, upon application of counsel for all parties the above entitled cases are continued to Pittsburgh, to be placed upon the list for the week of September 24, 1923.

Per Curiam.

September 25, 1923.—Argued.

[fol. 124] In Supreme Court of Pennsylvania

Judgment—February 4, 1924

The decree of the Superior Court in affirmed and the appeal is dismissed at the cost of appellant.

Simpson, J.

IN SUPREME COURT OF PENNSYLVANIA

ORDER TO HOLD RECORD

And now, 2/8/24, it is ordered that the Prothonotary of this Court for the Western District thereof hold the record in the above entitled cases for sixty days (60) from this date within which time the appellant may make motions for reargument of the cases before this court and may make applications for writs of error from the Supreme Court of the United States.

R. v. M., C. J.

March 24, 1924.—Petition by appellant for writ of error from Supreme Court of the United States and for reargument filed.

IN SUPREME COURT OF PENNSYLVANIA

DOCKET ENTRIES

April 10, 1924.—Prayers of petitions are refused. Robert von Moschzisker, Chief Justice.

And now, April 11, 1924, it is ordered that the Prothonotary of this Court for the Western District thereof hold the record in the [fol. 125] above entitled cases for thirty (30) days from this date within which time the appellant may make application to a Justice of the Supreme Court of the United States for Writs of Error from that Court.

Robert S. Frazer, Justice of the Supreme Court of Pennsylvania.

[fol. 126] May 3, 1924.—Writ of error from Supreme Court of the United States, dated April 28, 1924, and four copies of writ of error filed.

May 3, 1924.—Bond of Peoples Natural Gas Company, with National Surety Company of New York as surety in sum of Five Hundred ($500.00) dollars with approval of Butler, J., dated April 26, 1924, and copy of bond filed.

May 12, 1924.—Citation issued by Butler, J. dated April 28, 1924, with acceptance of service by Frank M. Hunter, Counsel for Public Service Commission, J. E. B. Cunningham Attorney for City of Johnstown, and David I. McCahill, Attorney for Johnstown Fuel Supply Company, filed.

May 21, 1924.—Petition for Writ of Error filed.

May 22, 1924.—Writ of Error, citation, copy of bond and certified transcript of record delivered to Samuel G. Nolan, Esq., of Counsel for Peoples Natural Gas Company, for transmission to Clerk of Supreme Court of the United States.

[fol. 127] IN SUPREME COURT OF PENNSYLVANIA

RETURN TO WRIT OF ERROR

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within titled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of Pennsylvania, in the City of Pittsburgh, this 22nd day of May, 1924.

Pier Dannals, Prothonotary of the Supreme Court of Pennsylvania for the Western District. (Seal of the Supreme Court of Pennsylvania, Western District.)

[fol. 128] IN SUPREME COURT OF PENNSYLVANIA

CLERK'S CERTIFICATE

I, Pier Dannals, Prothonotary of the Supreme Court of Pennsylvania, for the Western District thereof, Do hereby Certify that the foregoing Record, pages 1a to 1199a, inclusive and 22 to 126 inclusive, is a true and faithful copy of the Record and Proceedings of the Supreme Court of Pennsylvania, in the Western District aforesaid, in a certain suit therein pending, wherein the Peoples Natural Gas Company is appellant and the Public Service Commission is appellee.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said the Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this 22nd day of May in the year of our Lord one thousand nine hundred and twenty-four.

Pier Dannals, Prothonotary. (Seal of the Supreme Court of Pennsylvania, Western District.)

[fols. 129 & 130] IN SUPREME COURT OF PENNSYLVANIA

JUDGE'S CERTIFICATE TO CLERK

I, Hon. Robert von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania, Do Certify, that Pier Dannals was at the time of signing the annexed attestation and now is Prothonotary of the said The Supreme Court of Pennsylvania, in and for the Western District, to whose acts as such full faith and credit are and ought to be given; and that the said attestation is in due form.

In Witness Whereof, I have hereunto subscribed my name this 22nd day of May in the year of our Lord one thousand nine hundred and twenty-four.

Robert von Moschzisker

IN SUPREME COURT OF PENNSYLVANIA

CLERK'S CERTIFICATE TO JUDGE

I, Pier Dannals, Prothonotary of The Supreme Court of Pennsylvania in and for the Western District, Do Certify, that the Honorable Robert von Moschzisker by whom the foregoing Certificate was made and given, was at the time of making and giving the same and is now Chief Justice of the Supreme Court of Pennsylvania; to whose acts as such full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said the Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this 22nd day of May in the year of our Lord one thousand nine hundred and twenty-four.

Pier Dannals. (Seal of the Supreme Court of Pennsylvania, Western District.)

[fol. 131] PETITION FOR WRITS OF ERROR

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the Peoples Natural Gas Company respectfully represents:

First. Your petitioner is a corporation of the Commonwealth of Pennsylvania, incorporated under the Natural Gas Act of May 29, 1885, P. L. 29.

Second. In proceedings before The Public Service Commission of the Commonwealth of Pennsylvania at Nos. 1098 and 1083 Complaint Docket, 1916, orders were entered by the Commission on October 3, 1921, directing your petitioner to continue to supply natural gas and service incident thereto to the Johnstown Fuel Supply Company for distribution in the City of Johnstown (Certified Record, pages 42 and 43). From these orders appeals were prosecuted by your petitioner to the Superior Court of Pennsylvania at Nos. 107 and 108 April Term, 1922. The Superior Court of Pennsylvania affirmed said orders of the Commission and dismissed the appeals. From said decision of the Superior Court appeals were allowed and duly prosecuted in the Supreme Court of Pennsylvania which court on the 4th day of February, 1924, made a final disposition of these cases by overruling and dismissing all the assignments of error and [fol. 132] affirming the decrees of the Superior Court and dismissing the appeals at the cost of the appellant. On the 24th day of March, 1924, petitioner made an application to the Supreme Court of Pennsylvania for the allowance of writs of error from the Supreme Court of the United States, which was accompanied by a petition for a

re-hearing as is required by the rules of the Supreme Court of Pennsylvania. On the 11th day of April, 1924, said application and petition were dismissed by the Supreme Court of Pennsylvania and the granting of writs of error refused by the Honorable Robert von Moschzisker, Chief Justice of the said Supreme Court of Pennsylvania.

Third. This petition is accompanied by assignments of the errors alleged to have been committed by the Sapreme Court of Pennsylvania and by a prayer for reversal, which are attached hereto and marked Exhibit "A."

Fourth. This petition is accompanied by a certified copy of the record as the same remains and appears on file in the Supreme Court of Pennsylvania.

Sixth. The statute of the State of Pennsylvania, the validity of which (as construed by the Supreme Court of Pennsylvania and by the Superior Court of Pennsylvania, and under which authority was exercised by The Public Service Commission of the State of Pennsylvania in making the orders complained of in these cases) is [fol. 133] drawn in question on the ground of its being repugnant to the Constitution and laws of the United States, is the Act of the General Assembly of the Commonwealth of Pennsylvania approved the 26th day of July, 1913, P. L. 1374, known as "The Public Service Company Law" of Pennsylvania. The said statute and said orders of the Public Service Commission are drawn in question for the reason that the said Act as construed by the Supreme Court of Pennsylvania authorizes the orders of the Public Service Commission complained of, which orders compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia, and authorizes the Public Service Commission of Pennsylvania to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company. Said statute and orders are invalid because they are repugnant to section 8, Article I, of the Constitution of the United States and the laws of the United States made in pursuance thereof, to wit, among others the Act to regulate commerce approved February 4, 1887, and the various supplements and amendments thereto. Said orders are invalid also because they deprive the Peoples Natural Gas Company of property without due process of law and deny to it the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States. And said orders are invalid because they are repugnant to section 10 of Article I of the Constitution of the United States, which prohibits a state from passing any law impairing the obligation of contracts.

[fol. 134] Seventh. All the foregoing questions were clearly raised in these cases at all stages of the proceedings before the Public Service Commission and in all the courts, and were raised prior to the final decision of the Supreme Court of Pennsylvania. They were raised in the Supreme Court of Pennsylvania by the sixth, seventh, eighth,

ninth and tenth assignments of error. They were raised in the Superior Court of Pennsylvania by assignments of error numbered fourteen and fourteen and one-half. They were raised before the Public Service Commission of the Commonwealth of Pennsylvania by the answer of the Peoples Natural Gas Company filed with the Commission September 20, 1917, (Record Vol. I, p. 771a); by the answer of the Peoples Natural Gas Company filed with the Commission on October 4, 1917 (Record, Vol. II, pp. 783a, 784a); and by the additional answer of the Peoples Natural Gas Company filed on September 14, 1920 (Record, Vol. II, pp. 842a, 847a), and the said questions under the Constitution and laws of the United States were discussed and decided by the Supreme Court of Pennsylvania in its opinion, which is included in the certified copy of the record in these cases.

Eighth. The decree entered in this court in each of these cases is a final judgment or decree in a suit in the highest court of the state in which a decision in the suit can be had, and is one in which the validity of a statute of the State of Pennsylvania and of the authority exercised under a statute of the State of Pennsylvania is drawn in question on the ground that said statute and the authority exercised by the state officials under the state statute are repugnant to the [fol. 135] Constitution and laws of the United States; and the decisions of the Supreme Court of Pennsylvania and of the Superior Court and of the Public Service Commission were in favor of the validity of said statute and the authority exercised thereunder.

Ninth. These are cases which may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error under the provisions of section 237 of the Judicial Code.

Tenth. The Federal question involved in each of these cases is whether The Public Service Company Law of Pennsylvania, as construed by The Public Service Commission of Pennsylvania by the Superior Court of Pennsylvania and by the Supreme Court of Pennsylvania to confer authority upon the Public Service Commission of the State of Pennsylvania to make the orders which it made, does not violate the Constitution and laws of the United States.

Wherefore your petitioner, averring that the claims of Federal right herein mentioned were duly raised and insisted upon on the record before The Public Service Commission of Pennsylvania, in the Superior Court of Pennsylvania, and in the Supreme Court of Pennsylvania, respectfully prays that a writ of error may issue, and that it may be allowed to bring up for review before the Supreme Court of the United States the said judgment of the Supreme Court of Pennsylvania, and that your petitioner may have such other and further relief in the premises as may be just.

[fol. 136] And your petitioner will ever pray, etc.

The Peoples Natural Gas Company, by R. D. Beardsley, treasurer. Geo. B. Gordon, George B. Gordon, William Watson Smith, Arthur E. Young, S. G. Nolin, Attorneys for Petitioner.

Jurat showing the foregoing was duly sworn to by R. D. Beardsley omitted in printing.

[fol. 137] EXHIBIT "A" TO PETITION

Assignments of Error in the Supreme Court of the United States and Prayer for Reversal

And now, April 23, 1924, comes The Peoples Natural Gas Company, plaintiff in error, by its attorneys, and files herewith its petition for writ of error and says that there are errors in the record of the proceedings in the case of The Peoples Natural Gas Company, appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania et al., appellees, at No. 19 October Term, 1923, in the Supreme Court of Pennsylvania, and in the case of The Peoples Natural Gas Company, appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania, et al., appellees, at No. 20 October Term, 1923, in the Supreme Court of Pennsylvania; and for the purpose of having said cases reviewed in the Supreme Court of the United States makes the following assignments of error:

First. The Supreme Court of Pennsylvania erred in entering the following judgment in these cases:

"The decrees of the Superior Court are affirmed and the appeals are dismissed at the cost of appellant."

The judgment of the Supreme Court of Pennsylvania is a violation of Article I, Section 8, of the Constitution of the United States because in carrying on the business to which the judgment relates plaintiff in error was engaged in interstate commerce, to-wit, [fol. 138] buying, selling and transporting gas which was part of the interstate commerce between the States of Pennsylvania and West Virginia, and the larger part of the gas which was being delivered by plaintiff in error to the Johnstown Fuel Supply Company was a commodity in interstate commerce and was being transported in interstate commerce, and on that account the Public Service Commission of the State of Pennsylvania and the Courts of Pennsylvania were without jurisdiction to compel the plaintiff in error to continue to sell or deliver or transport gas which constituted interstate commerce to the Johnstown Fuel Supply Company or to fix the price or rate at which the gas should be so supplied; said order is in violation also of Clause I of the Fourteenth Amendment to the Constitution of the United States because it deprives plaintiff in error of liberty and property without due process of law; and said order is repugnant to Section 10 of Article I of the Constitution of the United States, which prohibits the states from passing any law impairing the obligation of contracts.

Second. The Supreme Court of Pennsylvania erred in not reversing the decree of the Superior Court of Pennsylvania, which affirmed the following order of the Public Service Commission:

"This matter being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a repord containing its findings of fact and conclusions [fol. 139] thereon, which said report is hereby approved and made a part hereof:

Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Pu' lic Service Commission, dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished."

because the Act of Assembly of the Commonwealth of Pennsylvania, approved July 26, 1913, P. L. 1374, known as the "Public Service Company Law," which, as construed and applied by the Court, prescribes that the Pu' lic Service Commission of the Commonwealth of Pennsylvania has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia and to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company, is repugnant to Section 8 of Article I of the Constitution of the United States and to the laws of the United States made in pursuance thereof, to wit, among others, the Act to regulate commerce, approved February 4, 1887, and the various amendments and supplements thereto.

Third. The Supreme Court of Pennsylvania erred in not revers- [fol. 140] ing the decree of the Superior Court of Pennsylvania, which affirmed the following order of the Public Service Commission.

"This matter being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof:

Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commissin, dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished."

because the Act of Assembly of the Commonwealth of Pennsylvania, approved July 26, 1913, P. L. 1374, known as the "Public Service Company Law," which, as construed and applied by the Caurt, prescribes that the Public Service Commission of the Commonwealth of Pennsylvania has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia and [fol. 141] to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company, is repugnant to Section I of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the Peoples Natural Gas Company of property without due process of law and also denies to it the equal protection of the laws.

Fourth. The Supreme Court of Pennsylvania erred in not reversing the decree of the Superior Court of Pennsylvania, which affirmed the following order of the Public Service Commission:

"This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof:

Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file post and publish, according to law, a tariff sched- [fol. 142] ule of rates for the gas and service thus supplied and furnished."

because the Act of Assembly of the Commonwealth of Pennsylvania, approved July 26, 1913, P. L. 1374, known as the "Public Service Company Law," which, as construed and applied by the Court, prescribes that the Public Service Commission of the Commonwealth of Pennsylvania has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural

gas imported into Pennsylvania from the State of West Virginia and to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company, is invalid on the ground that it is repugnant to Section 10 of Article I of the Constitution of the United States, which prohibits the States from passing any law impairing the obligation of contracts.

For these errors the Peoples Natural Gas Company, plaintiff in error, prays that said judgment of the Supreme Court of Pennsylvania be reversed and for costs.

The Peoples Natural Gas Company, by George G. Gordon, Arthur E. Young, Allen T. C. Gordon, S. G. Nolin, Attorneys for Plaintiff in Error.

[fol. 143] WRIT OF ERROR—Filed May 3, 1924

UNITED STATES OF AMERICA, ss:

(Seal of the Supreme Court of the United States.)

The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People's Natural Gas Company, appellant, and The Public Service Commission of the Commonwealth of Pennsylvania, appellee, and Johnstown Fuel Supply Company and Joseph Caulfield, Mayor of the City of Johnstown, intervening appellees, No. 19 October Term, 1923, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to [fol. 144] the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said The People's Natural Gas Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-eighth day of April, in the year of our Lord one thousand nine hundred and twenty-four.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

Allowed by Pierce Butler, Associate Justice of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 145] Bond on Writ of Error for $500—Approved and filed May 3, 1924; omitted in printing

[File endorsement omitted.]

[fol. 146] Citation—In usual form showing service on Frank M. Hunter et al., filed May 12, 1924

[fol. 147] In Supreme Court of United States

Stipulation That the Record in No. 407 Need Not Be Printed and That the Case May Be Heard on the Record in No. 406—Filed July 18, 1924

Counsel for the Plaintiff in error and counsel for the defendants in error agree that the record in the above entitled case at No. 1056 October Term, 1923, need not be printed, and that this case may be heard on the record in the case of The Peoples Natural Gas Company, plaintiff in error, against The Public Service Commission of the Commonwealth of Pennsylvania, Johnstown Fuel Supply Company and Joseph Caufliel, Mayor of the City of Johnstown, Defendants in Error, at No. 1055 October Term, 1923.

George B. Gordon, of Counsel for Plaintiff in Error. Frank M. Hunter, Attorney for the Public Service Commission of the Commonwealth of Pennsylvania, Defendant in Error.

David I. McCahill, Attorney for Johnstown Fuel Supply Company, Defendant in Error.

[fol. 147½] [File endorsement omitted.]

[fol. 148] IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PARTS OF RECORD TO BE PRINTED—Filed July 18, 1924

To William R. Stansbury, Clerk of the Supreme Court of the United States:

It is hereby stipulated and agreed between counsel for the plaintiff in error and counsel for the defendant in error that the following portions of the record shall be printed for use at the argument of the case:

(1) Complaint of Louis Franke—beginning on page 748a of the printed record and extending to the middle of page 763a.

(2) Answer of Johnstown Fuel Supply Company—beginning at the middle of page 763a and extending to the bottom of page 765a.

(3) Demurrer and answer of Peoples Natural Gas Company—beginning on page 766a and extending to bottom of page 770a.

[fol. 149] (4) Amendment thereto—beginning at top of page 771a and extending to middle of page 773a.

(5) Franke's supplemental complaint—beginning at top of page 774a and extending to middle of page 779a.

(6) Supplemental answer of Johnstown Fuel Supply Company—beginning at middle of page 779a and extending to middle of page 783a.

(7) Answer and demurrer of the Peoples Natural Gas Company—beginning at bottom of page 783a and extending to bottom of page 789a.

(8) Order of Public Service Commission—beginning on page 791a and extending to middle of page 792a.

(9) Entire petition, including the assignment of error, of Peoples Natural Gas Company to the Superior Court of Pennsylvania for the allowance of an appeal from the order of the Public Service Commission of the Commonwealth of Pennsylvania overruling its demurrer and ordering it to file, post and publish its tariff and schedule of rates covering the service complained of—beginning at the middle of page 793a and extending to and including the end of the petition on page 797a.

(10) Opinion of Superior Court—beginning at the middle of page 808a and extending to the middle of page 824a.

(11) Opinion of Supreme Court of Pennsylvania—beginning at the middle of page 824a and extending to the middle of page 825a.

(12) Complaint of Joseph Caufflel—beginning at the middle of page 825a and extending to the top of page 828a.

(13) Complaint of Joseph Caufflel—beginning at page 829a and extending to bottom of page 836a.

(14) Answer of Peoples Natural Gas Company—beginning at top of page 837a and extending to bottom of page 840a.

(15) Order of Public Service Commission—page 841a.

(16) Answer of Peoples Natural Gas Company—beginning at top of page 842a and extending to the bottom of page 849a.

[fol. 150] (17) Answer of Johnstown Fuel Supply Company—beginning at top of page 850a and extending to bottom of page 860a.

(18) Petition of Peoples Natural Gas Company—beginning at top of page 862a and extending to bottom of page 866a.

(19) Answer of City of Johnstown—beginning at top of page 838a and extending to middle of page 870a.

(20) Answer of Johnstown Fuel Supply Company—beginning at middle of page 870a and extending to bottom of page 876a.

(21) Entire petition, including the assignments of error, of Peoples Natural Gas Company to the Superior Court of Pennsylvania for the allowance of an appeal from the order of the Public Service Commission of the Commonwealth of Pennsylvania ordering the company to continue to supply natural gas and the service incident thereto to the Johnstown Fuel Supply Company for distribution in the City of Johnstown, and granting it permission to file, post and publish a tariff and schedule of rates for the gas thus supplied and furnished—beginning on page 877a and ending at the bottom of page 890a.

(222) Exhibit J-1, pages 1002a to 1013a, both inclusive.

(23) Exhibit J-2—beginning on page 1014a and extending to bottom of page 1018a.

(24) Exhibit J-3—beginning at bottom of page 1021-a and extending to bottom of page 1035a.

(25) Exhibit J-4—beginning at top of page 1036a and extending to bottom of page 1039a.

(26) Exhibit J-5 entire—beginning at the top of page 1046a and ending at middle of page 1060a.

(27) Erhibit 2—beginning at top of page 1065a and ending at middle of page 1066a.

(28) Exhibit J-9—beginning on page 1071a and extending to the bottom of page 1079a.

(29) Exhibit J-10 entire—beginning at the top of page 1080a and ending at the bottom of page 1082a.

(30) Exhibit J-13 entire—beginning at the top of page 1134a and ending at the bottom of page 1138a.

[fol. 151] (31) Exhibit J-14, J-15 and J-16—beginning at the top of page 1140a and extending to bottom of page 1142a.

(32) Exhibits J-17, J-18 and J-19—pages 1143a to 1146a inclusive.

(33) Testimony given before the various hearings of the Commission contained in printed Volume 1 of the record, portions printed being as follows:

Beginning at the top of page 1a to the middle of page 66a, ending with the answer "I am General Manager."

Testimony of John G. Pew beginning at the top of page 74a and ending at the bottom of page 103a.

Testimony of J. R. Crissey beginning at the top of page 163a and ending at the bottom of page 166a.

The printed record beginning at the top of page 187a and extending to and including the first two lines at the top of page 203a.

Pages 496a to 509a, consisting of statements of counsel and rulings of the presiding Commissioner.

Minutes of meetings September 8, 1920 and July 6, 1921, beginning on top of page 510a, 511a, 512a and the first half of 513a.

Testimony of George W. Crawford—beginning with and including the last paragraph on page 541a and ending at the bottom of page 571a.

Testimony of John G. Pew, beginning at top of page 572a and extending to the bottom of page 605a.

(34) Minutes of Sitting Commissioner—beginning with page 606a and ending with 616a.

(35) Testimony of John B. Tonkin, beginning at middle of page 621a and extending to the middle of page 635a.

(36) Entire testimony of Mr. C. F. Uebelacker, beginning at middle of page 635a and ending at the middle of page 691a.

(37) All the testimony taken before the Public Service Commission of Pennsylvania at the hearing at Harrisburg on September 13, 1921, in re Cambria Steel Company against Johnstown Fuel Supply Company and Peoples Natural Gas Company (C 1083) and Louis [fol. 152] Franke Mayor against Johnstown Fuel Supply Company and Peoples Natural Gas Company (C 1098)—alleging unjust and unreasonable increase in rates for gas service to both domestic and industrial consumers—beginning on page 695a and ending on page 743a.

(38) Exhibit No. 13 printed on page 1191a.

(39) Reports and orders of the Public Service Commission being portions of the Peoples Natural Gas Company's brief—pages 34 to 43 inclusive.

(40) The majority opinion and dissenting opinion filed in the Superior Court of Pennsylvania same brief—pages 44 to 64 inclusive.

(41) Assignments of error in the Supreme Court of Pennsylvania, at No. 19 October Term, 1923—pages 66 to 89 inclusive.

(42) Opinion of the Supreme Court of Pennsylvania by Mr. Justice Simpson—pages 1 to 24 both inclusive.

(43) Petition for writs of error to the Supreme Court of Pennsylvania entire—pages 1 to 6 both inclusive.

(44) Answer of the City of Johnstown to the petition to the Supreme Court of Pennsylvania for the allowance of a writ of error from the Supreme Court of the United States, entire beginning at top of page 1 and ending at the middle of page 4.

(45) Motion for reargument in the Supreme Court of Pennsylvania—pages 51 to 52 inclusive.

(46) Docket entries in the Supreme Court of Pennsylvania, at No. 19 October Term, 1923.

George B. Gordon, of Counsel for the Peoples National Gas Company, Plaintiff in Error. Frank M. Hunter, Attorney for the Public Service Commission of the Commonwealth of Pennsylvania, Defendant in Error. David I. McCahill, Attorney for Johnstown Fuel Supply Company, Defendant in Error. J. E. B. Cunningham, Attorney for Joseph Caufficl, Mayor of the City of Johnstown, Defendant in Error.

[fol. 152½] [File endorsement omitted.]

[fol. 153] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AND ADDITION TO RECORD—Filed July 25, 1924

To William R. Stansbury, Esq., Clerk of the Supreme Court of the United States:

It is hereby stipulated and agreed between counsel for the plaintiff in error and counsel for the defendants in error that the answer of the City of Johnstown to the petition of The Peoples Natural Gas Company to the Supreme Court of Pennsylvania for the allowance of a writ of error from the Supreme Court of the United States, a copy of which is attached to this stipulation, shall be added to the record as already certified by the Prothonotary of the Supreme Court of Pennsylvania and now on file in the Supreme Court of the United States in this case, and that the addition shall be printed for use at [fols. 154 & 154a] the argument in accordance with Item 44 of the stipulation of counsel as to the portions of the record to be printed, heretofore filed.

S. G. Nolin, of Counsel for The Peoples Natural Gas Company, Plaintiff in Error. Frank M. Hunter, Attorney for the Public Service Commission of the Commonwealth of Pennsylvania, Defendant in Error. David I. McCahill, Attorney for Johnstown Fuel Supply Company, Defendant in Error. J. E. B. Cunningham, Attorney for Joseph Cauffiel, Mayor of the City of Johnstown, Defendant in Error.

[fol. 155] ANSWER OF CITY OF JOHNSTOWN TO PETITION FOR WRIT OF ERROR

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of Pennsylvania:

The answer of the City of Johnstown, Intervening Appellee at No. 19, October Term, 1923, to the petition of the Peoples Natural Gas Company for the allowance of a writ of error from the Supreme Court of the United States respectfully sets forth the following:

First. The averments contained in the first paragraph of the petition are admitted.

Second. The averments of the second paragraph of the petition are substantially correct, but it is denied that the decree of your Honorable Court, under date of February 4, 1924, "made a final disposition of these cases."

It is admitted that said decree made a final disposition of the appeal then pending in your Honorable Court, but it is denied that any dis-

position has as yet been made of the real question pending before the Public Service Commission, upon the merits of that question.

Third. The averments contained in the third paragraph of the petition are admitted.

Fourth. The averments contained in the fourth paragraph of the petition are admitted.

Fifth. The averments contained in the fifth paragraph of the petition are admitted.

Sixth. The averments contained in the sixth paragraph of the petition are admitted.

Seventh. The averments contained in the seventh paragraph of the petition are denied as the same are therein stated.

It is admitted that the orders of the Public Service Commission of the Commonwealth of Pennsylvania, therein referred to, were made [fol. 156] under the authority of the Act of the General Assembly of the Commonwealth of Pennsylvania, approved the 26th day of July, 1913, P. L. 1374, known as "The Public Service Company Law" of Pennsylvania.

It is denied that the statement in said seventh paragraph of the petition, to the effect that your Honorable Court has construed said Public Service Company Law as authorizing the making of orders by The Public Service Commission which "compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia," and which "fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company," is a correct statement of the legal effect of said orders and of the construction placed upon said statute by your Honorable Court.

It is further denied that said statute and orders are repugnant to sections 8 and 10, Article I, of the Constitution of the United States, or to section 1 of the Fourteenth Amendment thereof, or to the Act of Congress to regulate commerce, as averred in the said paragraph of said petition.

Eighth. It is admitted that the petitioner sought to raise the Federal questions referred to in said petition at various stages of the proceedings, as averred in the eighth paragraph of the petition, but it is denied that these Federal questions have been actually and properly involved, or finally determined, in these proceedings up to the present time.

Ninth. The averments contained in the ninth paragraph of the petition are denied as the same are therein stated.

Tenth. It is denied that this is a case which should be reviewed in its present status by the Supreme Court of the United States.

Eleventh. It is denied that any Federal questions have been finally [fol. 157] determined up to the present time in this proceeding, or that any final order has been made by the Commission or final decree entered by the state courts.

Twelfth. Further answering said petition, respondent averred that the Commission did not order petitioner to "furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia," as averred in paragraph seven of the

petition, but merely directed it to continue the service in which it had been engaged for a number of years, namely, supplying natural gas for use in the City of Johnstown, a considerable part of which is produced by petitioner in the State of Pennsylvania and the remainder purchased by petitioner at the Pennsylvania-West Virginia state line.

Thirteenth. All that the Public Service Commission has thus far decided is that petitioner cannot discontinue the public service in which it is now engaged without the permission of the Commission and has, therefore, ordered petitioner to continue this service "until the further order of the Commission."

Fourteenth. The construction placed upon the Public Service Company Law by your Honorable Court is not as stated in the said petition, but merely as expressed in your opinion, that said statute authorizes the Public Service Commission to direct petitioner "to file a schedule of rates, and continue its public duties, pendente lite;" and your Honorable Court has also expressly stated in its opinion that:

"It has not been decreed that appellant may not be exempted from supplying gas for the benefit of the citizens of Johnstown, while still furnishing it to those in other localities, but only that it must first apply to the Public Service Commission for leave so to do, in order that there may be a public determination as to its rights in this respect."

[fol. 158] Fifteenth. With respect to the Federal questions, which petitioner alleges are involved, your Honorable Court has pointed out in its opinion that there is now no contract, the obligation of which could be impaired in violation of section 10 Article 1 of the Constitution of the United States, and that there has been no violation of section 1 of the Fourteenth Amendment, as the order of the Commission contained permission to petitioner to file a tariff schedule of its rates for the gas and service which it was ordered to continue to supply; and further that petitioner could not evade the supervisory and regulatory powers of the Commission over its service and rates by alleging that under the facts in this case it is engaged in interstate commerce.

Wherefore, Respondent respectfully contends that the prayer of the Petition should be denied.

City of Johnstown, by Tillman K. Saylor, City Solicitor; J. E. B. Cunningham, Attorneys.

Brief

We respectfully contend that this case, as it stands, is not a proper case for the granting of a writ of error from the Supreme Court of United States under Rule 86 of the Supreme Court of Pennsylvania.

Conceding for the sake of argument that Federal questions may be involved in this case in due time, it does not follow that the writ should now be allowed.

It will be time enough to consider the matter of an appeal to the Supreme Court of the United States after the petitioner, Peoples Natural Gas Company, Appellant in your Honorable Court, has

[fol. 159] applied to the Public Service Commission of Pennsylvania for leave to discontinue its present public service at the City of Johnstown and has been refused such permission by the Commission and such action of the Commission has been reviewed and affirmed by the appellate courts of this State. If the Commission should grant such permission, as it has power to do and may possibly do, upon a proper showing by the petitioner, or if the appellate courts of this State should reverse the Commission in the event of its refusal of such permission, there will be nothing to review.

The learned counsel for the petitioner have made no effort to secure a decision upon the merits of the real question involved, viz., whether the petitioner should be permitted by the Commission to curtail its present public service by eliminating the City of Johnstown from its territory of supply, but have persistently sought, and obtained, a review of each of the two interlocutory orders made by the Commission as necessary preliminaries to a decision upon the merits. Petitioner has continuously endeavored to evade the regulatory power of the Commission by denying the Commission's jurisdiction over it with respect to the business it has been transacting for a number of years. All of the questions which have been decided adversely to the contentions of petitioner up to the present time have been jurisdictional questions which will be inolved and finally adjudicated on an appeal from such final order as the Commission may hereafter make. And although appeals from these jurisdictional orders were entertained and disposed of by the appellate courts of this State, in view of the provisions of our Public Service Company Law relating to appeals from the orders of the Commission, the orders appealed from were, nevertheless, interlocutory in effect and there has as yet been no final order properly reviewable by the Supreme Court of the United States.

A review and summary of the proceedings will show that the mat-[fol. 160] ters decided by the Commission and our appellate Courts are:

1. That the business in which the petitioner is engaged at Johnstown is a public service and not a matter of private contract between it and the Johnstown Fuel Supply Company (the local distributing company) and that petitioner is, therefore, required by our Public Service Company Law to file a tariff of its rates for such service.

2. That the petitioner cannot evade the supervisory and regulatory powers of the Commission over its service and rates upon the allegation that in supplying natural gas to the City of Johnstown it is engaged in interstate commerce, and that the orders of the Commission, requiring it to file a schedule of its rates and continue to supply gas until it has applied to and secured the permission of the Commission to discontinue such supply, amount to an unreasonable interference with, and unduly burden, this interstate commerce.

3. That the petitioner cannot discontinue its supply at Johnstown by proceeding under the fifth Section of the Natural Gas Act, until it shall have applied to, and upon a proper showing of facts secured from, the Commission permission to thus curtail the services which it has been rendering for many years.

4. (a) That the gas when sold at Johnstown, although it consisted of a mixture containing some gas produced in West Virginia and purchased by petitioner at the state line, was not in interstate commerce under the facts in this case, but that any interstate commerce which may have existed ended at the Pennsylvania-West Virginia State Line.

(b) That even if it could be considered as being in interstate commerce yet, as natural gas is excepted from the Interstate Commerce Act, the petitioner was still subject to State regulation with respect to the serving of this gas and the rates to be charged therefor

(c) That the Commission's orders do not contravene the interstate [fol. 161] commerce clause of the Federal Constitution, even if Congress had not excluded natural gas from the Interstate Commerce Act, because the orders are purely incidental to the performance of petitioner's charter obligations and have no more effect upon interstate commerce than would an order requiring a lighting or heating company to continue indiscriminate service, although it obtained its coal or oil in another state; and that the orders of the Commission merely prevent discrimination and are not directed against interstate commerce or any of its regulations.

The matters stated by the learned counsel for petitioner in their brief in support of the present applications, at pages 55, 56, and 57 thereof, under the heading "History of this Proceeding" are substantially correct, except that the complaint of the City of Johnstown filed September 24, 1917 (Record Volume II, p. 774a) and referred to in the second paragraph on page 56 of petitioner's brief, was considerably broader than there stated.

This was a supplementary complaint and set out in detail the manner in which petitioner had extended its facilities for the purpose of serving the City of Johnstown under a contract with the Johnstown Fuel Supply Company by the terms of which the rates to be charged consumers were dictated and controlled by petitioner, and in which complaint it is expressly averred that the rates charged by petitioner to domestic consumers in the City of Johnstown, through said local distributing company, are excessive, unjust and unreasonable and unjustly discriminatory.

In addition it is averred that although petitioner is engaged in a public service at Johnstown it had failed to comply with the requirements of the Public Service Company Law by filing, publishing and posting its tariffs and schedules of rates for the services there rendered.

The prayer of the complaint was that the Commission should [fol. 162] determine the rates then charged to be unreasonable and should find that petitioner had violated the Public Service Company Law by failing to file its rates, and that the Commission should determine and prescribe the reasonable rates and charges to be collected by each gas company.

Up to the present time there has been no determination by the Commission with respect to the rates to be charged by either gas company at Johnstown, and there are now pending before the Commis-

sion four complaints filed in behalf of the City of Johnstown against four separate schedules of rates.

Instead of attempting to justify the rates which it received for the gas furnished by it at Johnstown, the petitioner attempted to evade the jurisdiction of the Commission upon the grounds above stated and declined to submit any evidence in support of the reasonableness of the rates it was then receiving for each thousand cubic feet of natural gas used by domestic consumers residing in Johnstown.

After argument before the Commission, the order of December 17, 1917 (Record Volume II, p. 791a) quoted in petitioner's brief at the bottom of page 57, was made.

This order merely required petitioner to file, post and publish according to law, its tariff and schedule of rates covering its service at the City of Johnstown, within fifteen days after the service of the order.

Of course, there could be no investigation of the reasonableness of petitioner's rates until a schedule thereof had been filed.

From this order an appeal was taken to the Superior Court and the order of the Commission affirmed (Franke vs. Johnstown Fuel Supply Company, 7 Pa. Super. Ct., 446) and the appeal from the decision of the Superior Court to the Supreme Court was dismissed June 26, 1920 on the ground "that the order appealed from was not a final order and the appeal therefore premature" (Peoples Natural [fol. 163] Gas Company vs. The Public Service Commission, 268 Pa. 235).

Thereupon petitioner filed its contract with the Johnstown Fuel Supply Company as its schedule of rates and gave notice that it would discontinue the supply of natural gas to the City of Johnstown on October 1, 1920.

In view of the threat to discontinue the supply of natural gas at Johnstown, the City, acting through its Mayor, filed on September 1, 1920, a complaint praying for an order to restrain petitioner from discontinuing the supply of gas (Record Volume II, p. 829a). The petitioner filed an answer challenging the jurisdiction of the Commission, and the Johnstown Fuel Supply Company filed an answer (Record Volume II, p. 850a) joining in the prayer of the City.

Under date of September 13, 1920, after a hearing, the Commission made an order (Record Volume II, p. 964a: Brief for Petitioner, p. 60) requiring and directing both companies "to continue the public service rendered by each of them in the supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission."

Testimony was then taken at Pittsburg and at Harrisburg on the dates stated by petitioner at page 61 of its brief, but there is no significance in the fact that the stenographer used the phrase "Testimony Closed" at the conclusion of the hearing in Harrisburg on September 13, 1921, for, as a matter of fact, the testimony in this case has not been closed and cannot be closed in view of the complaints still pending against the reasonableness of the rates of the petitioner and the Johnstown Fuel Supply Company and because

the order of the Commission of September 13, 1920, is merely an order to continue the service "until the further order of the Commission."

Instead of making a proper application for permission to discontinue its service at Johnstown, petitioner on September 19, 1921, [fol. 164] applied to the Commission (Record Volume II, p. 975a) for the vacation of the order of September 13, 1920, and, after argument and consideration of the report of Commissioner Reed, the Commission entered its order of October 3, 1921, in the following language (Petitioner's Brief, p. 62):

"Now to wit, October 3, 1921, It Is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.

"Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished."

It is, therefore, apparent that the order of September 13, 1920, was the real basis for the appeal and that the order of October 3, 1921, is merely a denial of the request of appellant to vacate and dissolve that order. Substantially, therefore, the action of the Commission appealed from and reviewed and affirmed by the appellate courts is a direction to petitioner to continue to supply gas at Johnstown until the further order of the Commission, i. e., until petitioner shall have applied to the Commission for, and secured by a proper showing of facts, permission to discontinue the service in question.

It is true that some testimony was taken before the Commission indicating the hardships and injustices which would be imposed upon the citizens of Johnstown if the supply of natural gas were discontinued and that Commissioner Reed in his opinion (Appellant's Brief in the Supreme Court, pp. 36-43) discussed this testimony, but [fol. 165] the petitioner has never even applied to the Commission for permission to discontinue its service at Johnstown, much less undertake to show any facts which would justify the Commission in granting such permission.

It is perfectly clear from an examination of the opinion and order of the Commission and from an examination of the opinions of the Superior and Supreme Court of Pennsylvania, that the position which we have here taken with respect to the present status of these proceedings is correct.

Commissioner Reed in his opinion states that the only reason advanced by the Peoples Natural Gas Company for discontinuing the supply of gas at Johnstown is its alleged inability to furnish adequate service, on account of the shortage of gas, to all its customers during the winter months, and that it deems its first duty is to furnish service to those customers taking the gas direct from it as contradistinguished from those taking it through the Johnstown Fuel Supply Company. The Commissioner [illegible] out, however, that even assuming that there is a shortage of [illegible] gas, "the Commission

cannot determine in this proceeding what present consumers should or should not be deprived of the company's service," and that "aside from the method here resorted to for the determination of such a question, the testimony is not sufficiently informing on which to base a finding."

All that the Commission decided upon this branch of the case was that "there is nothing in the record or evidence presented to justify a discontinuance of the supply of natural gas by the Peoples Company to the Johnstown Company for distribution in the City of Johnstown."

Again the Superior Court (79 Pa. Super. Ct. 560) in the majority opinion written by Judge Keller says:

"We are not now called upon to decide whether if appellant had [fol. 166] made application to the Commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.

To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Again, Mr. Justice Simpson, speaking for the your Honorable Court (Opinion of Supreme Court, Petitioner's Brief, pp. 25-26) describes the orders of the Commission as orders "to file a schedule of rates, and continue its public duties, pendente lite."

Moreover in the course of the opinion (Petitioner's Brief, p. 28) your Honorable Court say:

"As already stated, it has not been decreed that appellant may not be exempted from supplying gas for the benefit of the citizens of Johnstown, while still furnishing it to those in other localities, but only that it must first apply to the Public Service Commission for leave so to do, in order that there may be a public determination as to its rights in this respect."

The interlocutory character of the order appealed from is also recognized by your Honorable Court.

Although there was no formal motion filed to quash the appeal, it was argued (Brief for City of Johnstown, Intervening Appellee, pp. 20-24 that the order appealed from was not a final order and that both the Commission and the Superior Court had expressly declined to pass upon the merits of the case and had merely decided that up to the present time there is nothing in the record to justify the discontinuance of the supply of gas now being furnished by the petitioner at Johnstown.

[fol. 167] Speaking of this feature of the case your Honorable Court said (Petitioner's Brief, p. 29):

"In order to avoid misapprehension, however, we should add that we do not decide the order complained of is so far final as to be the proper basis for an appeal. If we had sustained the motion to quash

on the ground that it was not, the only effect would have been to postpone, until after final decree, the consideration of the questions herein decided. Hence, since we agree with appellee on the merits, and are admonished by the fundamental law that litigants are entitled to 'justice without * * * delay,' we have deemed it best to shorten, as far as may be, future proceedings in this long drawn out litigation."

Here is an express recognition of the fact that "future proceedings" before the Commission will be necessary to a disposition of this case upon its merits.

Notwithstanding the statement of the learned counsel for petitioner to the contrary, at page 74 of petitioner's brief, it is perfectly clear that your Honorable Court gave due consideration to all the material facts appearing from the record, and that your opinion is remarkably free from inaccurate statements even with respect to some immaterial facts, referred to in the recital of the origin and history of the controversy. The answer of the Johnstown Fuel Supply Company to the application of petitioner for the vacation of the order of September 13, 1920, (Record Volume II, p. 874a) speaks for itself, and amounts to an expression of its willingness to pay to petitioner whatever rates the Commission deemed reasonable, if and when petitioner complies with its legal duty to file a proper schedule of rates.

It appears from the record in this case that a dispute has arisen between the petitioner and the Johnstown Fuel Supply Company [fol. 168] with respect to the division as between these two gas companies of the moneys collected from the rate payers in the City of Johnstown. With these disputes the consumers of gas are not concerned, except in so far as they may affect the price to them of natural gas. During the entire period of controversy and litigation between these two gas companies in the Court of Common Pleas of Cambria County the consumers have been paying the filed rates as increased from time to time.

Your Honorable Court was entirely correct in saying that the Commission "therefore directed the supply to be continued until such consent (of the Commission) was obtained." It is true that the order of October 3, 1921, does not contain any express provision to that effect, but it directs the service to be continued "as set forth in a prior order of the Public Service Commission dated September 13, 1920," and the order of September 13, 1920, directs the supply to be continued "until December 1, 1920, and until the further order of the Commission."

There is one inadvertant and immaterial error in the recital by your Honorable Court of the facts disclosed by the record. In the course of the opinion (Petitioner's Brief, p. 18) it is stated "that the only reason payment (to petitioner) has not been provided for is because appellant has not chosen to file the tariff of rates for which the order appealed from provides, etc." As a matter of fact the petitioner did file a new tariff in accordance with the permission granted in the order of October 3, 1921, fixing a rate of forty

cents, net, per thousand cubic feet, and a complaint was filed against this new tariff by the City of Johnstown, at Complaint Docket No. 4669.

The Johnstown Fuel Supply Company also filed a new tariff fixing a rate of fifty-four cents and continuing its ready to serve charge of fifty cents per month, and a complaint was also filed against this tariff at Complaint Docket No. 4668.

[fol. 169] These facts were recited in our Counter-History of the Case (Brief for City of Johnstown, p. 19). Both of these complaints are still pending before the Commission, but the fact that these tariffs were filed cannot affect in any possible way the conclusions reached by your Honorable Court. The material thing is that petitioner and Johnstown Fuel Supply Company have been accorded all of their constitutional rights, and the consumers in Johnstown have been, and are now, paying the rates demanded for the service rendered.

We agree with the conception of the learned counsel for petitioner with respect to the effect of the opinion of your Honorable Court as stated at page 77 of Petitioner's Brief, in the following language:

"If we understand the opinion of this Court, it is that all the Court intended to decide is that the Peoples Natural Gas Company must continue its service, pendente lite."

Petitioner's counsel then ask "When will this case end?"

The answer is that it will end when they quit taking appeals from every interlocutory, jurisdictional, order the Commission makes, and by a proper application afford the Commission an opportunity to decide the merits of this controversy, i. e., whether petitioner shall be permitted to discontinue the service, and if not, what rates it is reasonably entitled to charge for that service.

Thus far petitioner has refused to submit the merits of its case to the determination of the Commission, and has elected, as it says, "to rely on the lack of power of the Commission," or in other words, to challenge the jurisdiction of the Commission over it.

The appellate courts have listened patiently to its various appeals, and we all now know one thing, and that is that the Commission has [fol. 170] jurisdiction to decide the merits of this controversy, and that the various efforts of petitioner to evade the Commission's jurisdiction have proven futile.

But that is about all we do know, and certainly petitioner is not entitled to have a review of these preliminary questions by the Supreme Court of the United States. Every delay in this proceeding has been due to petitioner's repeated efforts to escape from the regulatory power of the Commission over its service and rates. It is to be remembered that there is a vast difference between a case in which a public service company submits itself to the jurisdiction of the Commission, and asks leave to discontinue a part of its service, and one in which the public service company persistently denies the jurisdiction of the Commission.

The distinction between a proper case for the filing of joint rates under our Public Service Company Law and the present situation at Johnstown is too clear for argument.

We, therefore, contend that the petition for the allowance of a writ of error from the Supreme Court of the United States should be dismissed, and the motion for reargument denied.

Respectfully submitted, Tillman K. Saylor, City Solicitor; J. E. B. Cunningham, Attorneys for Respondent.

[fol. 171] [File endorsement omitted.]

Endorsed on cover: File No. 30,365. Pennsylvania Supreme Court. Term No. 70. The People's Natural Gas Company, plaintiff in error, vs. The Public Service Commission of the Commonwealth of Pennsylvania, Johnstown Fuel Supply Company, and Joseph Cauffield, etc. Filed May 24th, 1924. File No. 30,365.

FILED
OCT 5 1925
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

NO. 70 OCTOBER TERM, 1925.

THE PEOPLES NATURAL GAS COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, JOHNSTOWN FUEL SUPPLY COMPANY, and JOSEPH CAUFFIELD, Mayor of the City of Johnstown, Defendants in Error.

NO. 71 OCTOBER TERM, 1925.

THE PEOPLES NATURAL GAS COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA and JOHNSTOWN FUEL SUPPLY COMPANY, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

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BRIEF FOR PLAINTIFF IN ERROR

Note.—There are two writs of error before this court, originating in two complaints filed with the Public Service Commission, and relating to the supply of natural gas by the plaintiff in error to the Johnstown Fuel Supply Company, a local company which supplies natural gas to consumers in the city of Johnstown, Pennsylvania. The two cases involve exactly the same questions, were tried together before the Public Service Commission on the same record, and were disposed of by identical orders of the commission; they were appealed and disposed of in the same way by the Superior and Supreme Courts of Pennsylvania and are now, by stipulation filed in this court, to be disposed of upon the record at No. 70, which alone is printed (R. 324).

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Cambria Steel Co. vs. Johnstown Fuel Supply Co., 10 Pa. Corporation Rep. 166;

Peoples Natural Gas Co. vs. Public Service Commission of the Commonwealth of Pennsylvania, 79 Pa. Superior Ct. 560;

Peoples Natural Gas Co. vs. Public Service Commission of the Commonwealth of Pennsylvania, 279 Pa. 252.

The judgment in the last case is the one to which the writ of error relates.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

(a) The judgment of the Supreme Court of Pennsylvania, entered February 4, 1924, affirmed a decree of the Superior Court of Pennsylvania and dismissed the appeal therefrom at the cost of the appellant (R. 314, fol. 124).

The decision of the Superior Court thus affirmed was a decree entered October 9th, 1922, affirming an order of the Public Service Commission of Pennsylvania (R. 282, fol. 59).

The order of the Public Service Commission entered October 3, 1921 (R. 274, fol. 43), made permanent a prior interlocutory order of the commission entered September 13, 1920 (R. 270, fols. 35, 36).

(b) The following claim advanced by the plaintiff in error and the rulings made thereon in the lower courts are here relied upon as the basis of this court's jurisdiction:

The Public Service Commission of the State of Pennsylvania entered an order compelling the plaintiff in error to supply to the Johnstown Fuel Supply Company natural gas which was a

commodity in interstate commerce. It was contended in the Supreme Court of Pennsylvania that the order of the commission was void as an unlawful interference with interstate commerce. (See 6th Assignment of Error in the Supreme Court of Pennsylvania, R. 289, fol. 73.)

This question was raised in the Superior Court of Pennsylvania by the 14th Assignment of Error (R. 230, fols. 889 a, 890 a). It was raised before the Public Service Commission by the answer of the Peoples Natural Gas Company filed September 14, 1920. The date is to be found at R. 207, fol. 842 a, and the assertion of the claim is to be found at R. 210, fols. 847 a, 848 a.

This federal question was decided against the plaintiff in error by the Public Service Commission of Pennsylvania in the order referred to, and is specifically discussed and disposed of in the opinion of the commission (R. 272, fols. 37, 38). The order of the commission was sustained by the Superior Court (R. 275, 282). The federal question, decided adversely to the plaintiff in error, is discussed at length in the opinion of the Superior Court, beginning at the top of page 277, fol. 48 and extending to the bottom of page 279, fol. 53, and in the dissenting opinion of Judges Linn and Porter, beginning at page 283, fol. 59, and extending to page 286, fol. 65. The Supreme Court of Pennsylvania, the court of last resort

in that state, decided the question finally against the plaintiff in error in an opinion containing a long discussion, which extends in the record from page 304, fol. 102 to page 310, fol. 114.

(c) This is a case which may be re-examined and reversed or affirmed by this court upon a writ of error under the provisions of Section 237 of the Judicial Code.

The decree entered in the Supreme Court of Pennsylvania is a final judgment or decree in a suit in the highest court of the state in which a decision in the suit can be had. The suit is one in which the validity of a statute of the State of Pennsylvania and of the authority exercised thereunder is drawn in question on the ground that said statute and the authority exercised by the state officials under the state statute are repugnant to the Constitution and laws of the United States. The decision of the Supreme Court of Pennsylvania was in favor of the validity of said state statute and the authority exercised thereunder. The state statute referred to is the Act of Assembly of the Commonwealth of Pennsylvania, known as "the Public Service Company Law," approved July 26, 1913, P. L. 1374 (West, Pa. Stat., 1740).

The Public Service Company Law has not been printed in the brief because it is not the

terms of the statute, but its application to interstate commerce by the court below, that is here complained of.

(d) Cases believed to sustain the jurisdiction of the court.

A writ of error is the proper remedy:

Texas and Pacific Railway Company vs. Abilene Cotton Oil Company, 204 U. S., 426;

Dahnke-Walker Milling Company vs. Bondurant, 257 U. S. 282;

Eureka Pipe Line Company vs. Hallanan et al., 257 U. S. 265;

United Fuel Gas Company vs. Hallanan et al., 257 U. S., 277;

State of Missouri vs. Kansas Natural Gas Company, 265 U. S., 298.

The judgment of the Supreme Court of Pennsylvania is a final judgment:

Wheeling & Belmont Bridge Co. vs. Wheeling Bridge Co., 138 U. S. 287;

Louisiana Navigation Company vs. Oyster Commission, 226 U. S. 99;

Williams vs. Morgan, 111 U. S. 684;

Forgay vs. Conrad, 6 How (U. S.), 200;

St. Louis, Iron Mountain & Southern R. R. Co. vs. Southern Express Co., 108 U. S. 24;

Central Trust Co. vs. Grant Locomotive Wks. 135 U. S. 207;

Winthrop Iron Co. vs. Meeker, 109 U. S. 180.

STATEMENT OF THE CASE.

(a) *History of the litigation.*

This litigation began in a complaint before the Public Service Commission of Pennsylvania against rates charged for natural gas supplied to consumers in Johnstown, Pa., by the Johnstown Fuel Supply Company (R. 166, fol. 748 a), the only person engaged in supplying natural gas to consumers in Johnstown. The Peoples Natural Gas Company, plaintiff in error here, was ordered to intervene in the case by the commission (see R. 175, fol. 766 a) when it appeared at a hearing that the Johnstown Company was getting its entire supply of natural gas from the Peoples Natural Gas Company.

The Peoples Company at once denied the jurisdiction of the commission, averring that the gas supplied by it was a commodity in interstate commerce, although mingled with some Pennsylvania gas. (R. 177 fol. 771 a). During the pendency of this proceeding other complaints were filed against the Peoples Company and docketed at the original number, alleging that that company was jointly engaged with the Johnstown Company in supplying natural gas in

Johnstown, and that it was violating the Public Service Company Law in not having filed a tariff of the rates it was charging the Johnstown Company (R. 172, fols. 774 a, 777 a).

On December 17, 1917, the commission made an order directing the Peoples Natural Gas Company to file, post and publish a tariff and schedule of rates (R. 187, fol. 791 a). In making this order the Public Service Commission decided the jurisdictional question against the Peoples Company; that is, it decided that, although most of the gas was produced in and imported from West Virginia, that fact did not exclude the Peoples Company from the jurisdiction of the commission in respect of that gas (3 Pa. Pub. Serv. Comm., Dec. 168; R. 187, fol. 791 a).

The Peoples Natural Gas Company appealed from this order to the Superior Court of Pennsylvania, and that court, on October 30, 1918, affirmed the commission's order (*Franke vs. Johnstown Fuel Supply Co.,* 70 Pa. Superior Ct., 446; R. 190, 198). From this decision the Peoples Company appealed to the Supreme Court of Pennsylvania, and on June 26, 1920, that court, of its own motion, dismissed the appeal as premature (*Peoples Natural Gas Co. vs. Public Service Commission,* 268 Pa., 235, R. 198).

In the meantime, on July 25, 1919, the Peo-

ples Natural Gas Company had notified the Johnstown Fuel Supply Company that the supply of gas would be discontinued and the contract terminated, in accordance with its terms, on October 1, 1920 (R. 264, fol. 1140 a). On July 24, 1920, in obedience to the order of the commission, the Peoples Natural Gas Company filed a tariff setting forth the rates and terms of the contract between it and the Johnstown Fuel Supply Company, and attached as part thereof a copy of the notice (R. 203, fol. 832 a; see complaint, R. 204, fol. 834 a).

On August 25, 1920, a complaint was filed by the Mayor of the City of Johnstown, alleging that the tariff filed by the Peoples Company was not a compliance with the order of the commission (R. 199, fol. 825 a). This complaint also was filed and docketed at the original number.

On September 1, 1920, still another complaint was filed by the same party and docketed at the same number, asking the commission to restrain the Peoples Natural Gas Company and the Johnstown Fuel Supply Company from discontinuing the supply of natural gas in the City of Johnstown (R. 201, fol. 829 a).

That these complaints were all filed and docketed by the Public Service Commission at the original number, and all these separate pro-

ceedings thus rolled into one, accounts for the fact that, although counsel have tried to eliminate all irrelevant matter, the record is still voluminous.

On September 8, 1920, a preliminary hearing was held before the commission on the question of the termination of the service, and on September 13, 1920, an interlocutory or temporary order was made by the commission requiring the Johnstown Company and the Peoples Company to continue to supply natural gas in the City of Johnstown until the further order of the commission (R. 206, fol. 841 a). On September 28, 1920, the Johnstown Fuel Supply Company filed its answer to the last-mentioned complaint, joining in the prayer thereof (R. 211, 216, fols. 860 a-861 a). Thereafter much testimony, ranging over a wide field, was taken before the commission. The testimony was finally closed at a hearing before the commission on September 13, 1921 (R. 140, 165, fols. 743 a-747 a). On the next day, September 14, 1921, the Peoples Company filed a petition for the vacation of the interlocutory restraining order (R. 217, fol. 862 a).

On September 26, 1921, the case came on for final hearing before the commission on the question whether the commission could or would compel the Peoples Company to furnish natural

gas to the Johnstown Company. On October 3, 1921, the commission filed its report and findings and an order requiring the Peoples Natural Gas Company to continue to furnish a supply of natural gas to the Johnstown Fuel Supply Company (10 Pa. Corp. Rep., 166; R. 274, fol. 42).

From this order the Peoples Natural Gas Company appealed to the Superior Court of Pennsylvania. On October 9, 1922, that Court affirmed the order of the commission (79 Pa. Superior Ct., 560; R. 282, fol. 59). From this decision the Peoples Natural Gas Company appealed to the Supreme Court of Pennsylvania, and that Court, on February 4th, 1924, affirmed the decree of the Superior Court (279 Pa., 252; R. 310, fol. 114). From that decision the Peoples Natural Gas Company sued out a writ of error from this court, which was allowed by Mr. Justice Butler (R. 323, fol. 143).

This is an outline of the history of the litigation, which has now continued for more than eight years, over substantially the one question whether the Pennsylvania Public Service Commission has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company interstate gas.

(b) *Statement of the material facts.*

The Peoples Natural Gas Company, plaintiff in error, is a public service corporation, incorporated June 26, 1885 (R. 239, fols. 1017 a-1020 a), under the Pennsylvania Act of May 29, 1885 (P. L. 29), providing for the incorporation and regulation of natural gas companies. It is engaged in the business of producing, transporting and supplying natural gas in the State of Pennsylvania. It was required to state in its charter the places where it proposed to supply gas to consumers; and by the Pennsylvania Act of May 11, 1897 (P. L. 50), it was required "to furnish *to consumers* along its lines and within its respective districts natural gas for heat or light or other purposes." (Italics ours.)

Under the provisions of the Act of May 29, 1885, P. L. 29, however, the Peoples Company has no power to occupy the streets of a municipality until it procures municipal consent (Section 13). By various amendments to its charter the company, from time to time, made changes in the territory of supply, sometimes adding and sometimes eliminating a municipal district. For a time the company had the city of Johnstown included in its territory of supply. But it never actually supplied consumers in that city and

never obtained municipal consent to occupy its streets.

Some years ago, owing to the depletion of the Pennsylvania gas fields, the natural gas companies began to look to West Virginia as a source of supply of natural gas. Accordingly, the owner of the stock of the Peoples Natural Gas Company (then, as now, the Standard Oil Company of New Jersey) organized a corporation under the laws of West Virginia known as the Hope Natural Gas Company, which engaged in the production of natural gas in West Virginia. The Hope Company entered into a contract with the Peoples Company to furnish the latter with a supply of gas, and constructed a main line of pipe from its gas fields in West Virginia to a point on the West Virginia-Pennsylvania state line, near the town of Brave, while the Peoples Company extended its main line of pipe to the same point, where the two lines were connected. Under the contract the Hope Company was required to transport the gas to the West Virginia state line and there deliver it to the Peoples Company (R. 31, fol. 75 a). Pursuant to this contract, the gas flows through the pipe lines in a continuous stream from the wells in West Virginia where it is produced to the various points in Pennsylvania where it is consumed. The natural pressure of the gas in the lines is augmented

by means of pumping or compressor stations located at various points. In the course of transportation the particular gas here in controversy passes through a pumping station operated by the Peoples Company at Brave, near the state line, and through another at Derry, Pennsylvania, distant twelve miles from Johnstown (R. 43, fol. 98 a).

The particular gas purchased by the Peoples Company from the Hope Natural Gas Company and sold, as hereinafter explained, to the Johnstown Fuel Supply Company, as it passes through the pipe lines of the Peoples Company, becomes mingled with gas produced by the Peoples Company in Pennsylvania, with the result that at the point of connection of the Peoples Company's line with the line of the Johnstown Fuel Supply Company seventy-five per cent. of the gas is West Virginia gas and twenty-five per cent. is Pennsylvania gas (R. 42, fols. 96 a, 97 a).

The Johnstown Fuel Supply Company was organized in 1907 by a certain Mr. Crawford and his associates, who filed their application for a charter on September 20, 1907 (R. 247, fol. 1036 a). The charter authorized the company to produce gas in certain places in Pennsylvania and named among the places where gas was to be supplied to consumers the city of Johnstown

and its suburbs (R. 247, fol. 1037 a). Prior to its incorporation, the promoters of the company had procured an ordinance from the city of Johnstown authorizing the United Fuel Gas Company and its assigns to occupy the streets of the city (R. 231, fol. 1002 a); after the incorporation of the Johnstown Fuel Supply Company its promoters had that ordinance assigned to it, with the consent of the city, whereby the latter company was authorized and became subject to the duty to supply natural gas to consumers in the city of Johnstown. (See complaint, R. 166, at fol. 749 a.) The Johnstown Company thereupon laid a system of distributing gas lines in the streets of the city of Johnstown, through which it was prepared to distribute natural gas to consumers in that city.

The Johnstown Fuel Supply Company has at all times procured its entire supply of natural gas from the Peoples Natural Gas Company, plaintiff in error, first, by means of a contract obtained by the promoters on December 31, 1906 (R. 256, fol. 1071 a) and afterwards assigned to the Johnstown Company (R. 260, fol. 1079 a), and later, by means of a contract made directly between the two companies and dated August 12, 1909 (R. 240, fol. 1021 a). It is the uncontradicted evidence in the case that neither the promoters of the Johnstown Fuel Supply Company

nor the officers or directors of that company had any interest in the Peoples Company or in the Standard Oil Company of New Jersey (R. 66, fol. 549 a, R. 36, fol. 85 a, R. 38, fol. 89 a), and that the contract between the two companies was made in good faith and at arm's length, and expressed completely all the arrangements between the two companies on the subject (R. 80, fol. 576 a).

The contract of August 12, 1909, which was still in force in 1916 when the controversy began out of which this case arose, provides for the purchase and sale of gas at the point of connection between the main lines of the two companies at prices stated, "unless the Seller shall have given to the Buyer not less than twelve months' written notice that on and after the date specified in such notice it will not furnish or deliver any more natural gas * * *. The Seller shall not be entitled to give any such notice until after six years from the date hereof" (R. 241, fol. 1024 a). It is a fact proved by uncontradicted testimony in the case that the Peoples Company was unwilling to guarantee to the Johnstown Company a supply of natural gas for a longer term than six years because of the diminishing supply, and because the company felt its first duty to be to supply its own consumers (R. 80, fol. 576 a, *et seq.*). Both companies were care-

ful to frame a contract clearly expressing their intentions on this vital point, and therefore framed one which gave the Johnstown Company the right to go elsewhere whenever the Peoples Company failed to give it an adequate supply of natural gas (R. 246, par. 24), and reserved to the Peoples Company the right to terminate the contract at will after the lapse of six years on twelve months' notice.

In pursuance of this contract the Peoples Company laid a pipe line from the then terminus of its pipe line at Derry, Pennsylvania, twelve miles distant, to the point of connection with the Johnstown Company's line five hundred feet outside the city limits. At that point the Peoples Company throughout the entire history of the case delivered to the Johnstown Company a supply of natural gas, about seventy-five per cent. of which was a commodity in interstate commerce brought from West Virginia in the manner above described in this statement of facts. Receiving the gas from the Peoples Company, the Johnstown Company conducted the gas through its main line five hundred feet to the city limits and delivered it through its distributing system in the city of Johnstown to the consumers, to whom it sold the gas at the burner tips.

The case comes to this court on a writ of error complaining of the final order of the Penn-

sylvania Public Service Commission, afterward affirmed by the Superior and Supreme Courts of Pennsylvania, made in a proceeding based on the complaint of the Mayor of the City of Johnstown (R. 201) and entered October 3, 1921 (R. 274), directing plaintiff in error to continue to furnish a supply of gas to the Johnstown Fuel Supply Company for distribution in the city of Johnstown.

ASSIGNMENTS OF ERROR WHICH ARE URGED IN THIS COURT.

"First. The Supreme Court of Pennsylvania erred in entering the following judgment in these cases:

> 'The decrees of the Superior Court are affirmed and the appeals are dismissed at the cost of appellant.'

"The judgment of the Supreme Court of Pennsylvania is a violation of Article 1, Section 8, of the Constitution of the United States because in carrying on the business to which the judgment relates plaintiff in error was engaged in interstate commerce, to-wit, buying, selling and transporting gas which was part of the interstate commerce between the States of Pennsylvania and West Virginia, and the larger part of the gas which was being delivered by plaintiff in error to the Johnstown Fuel Supply Company was a commodity in interstate commerce and was being transported in interstate commerce, and on that account the Public Service Commission of the State of Pennsylvania and the Courts of Pennsylvania were without jurisdiction to compel the plaintiff in error to continue to sell or deliver or transport gas which constituted

interstate commerce to the Johnstown Fuel Supply Company or to fix the price or rate at which the gas should be so supplied; said order is in violation also of Clause 1 of the Fourteenth Amendment to the Constitution of the United States because it deprives plaintiff in error of liberty and property without due process of law; and said order is repugnant to Section 10 of Article 1 of the Constitution of the United States, which prohibits the states from passing any law impairing the obligation of contracts."

(R. 320, fols. 137, 138)

Note.—The portions of this assignment which allege violation of the due process of law clause and of the impairment of the obligation of contracts clause of the Constitution are not pressed.

"Second. The Supreme Court of Pennsylvania erred in not reversing the decree of the Superior Court of Pennsylvania, which affirmed the following order of the Public Service Commission:

> 'This matter being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a re-

port containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof:

Now, to wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.

Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished.'

because the Act of Assembly of the Commonwealth of Pennsylvania, approved July 26, 1913, P. L. 1374, known as the 'Public Service Company Law,' which, as construed and applied by the Court, prescribes that the Public Service Commission of the Commonwealth of Pennsylvania has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company with natural gas imported into Pennsylvania from the State of West Virginia and to fix the price at which the Peoples

Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company, is repugnant to Section 8 of Article 1 of the Constitution of the United States and to the laws of the United States made in pursuance thereof, to wit, among others, the Act to regulate commerce, approved February 4, 1887, and the various amendments and supplements thereto."

(R. 321, fols. 138, 139)

ARGUMENT.

SUMMARY.

POINT I. The Public Service Company Law, as construed and applied by the Public Service Commission of Pennsylvania in the order affirmed by the judgment of the Supreme Court of Pennsylvania, is an unconstitutional attempt to regulate interstate commerce. Page 28.

A. The undisputed facts bearing upon the federal question. Page 28.

B. The gas which plaintiff in error is required to supply under the mandate of the Public Service Commission is a commodity in interstate commerce. Page 32.

C. The sale and delivery of gas in interstate commerce by the Peoples Company to the Johnstown Company is not interstate commerce of such a local nature as can be regulated by the state in the absence of congressional action. Page 35.

D. The reasons given by the Supreme Court of Pennsylvania for its decision are fallacious. Page 53.

(1) There is nothing in the suggestion of the Pennsylvania courts that the contract between the Peoples Company and the Hope Company should have been put in evidence *in extenso*. Page 55.

(2) Natural gas purchased by the Peoples Company from the Hope Company in West Virginia and sold to the Johnstown Company at Johnstown in Pennsylvania is a commodity in interstate commerce. The place of delivery to the Peoples Company is immaterial. Page 57.

POINT II. The judgment of the Supreme Court of Pennsylvania to which this writ of error was granted was a final judgment within the meaning of 237 of the Judicial Code. Page 80.

CONCLUSION. This case is ruled by *Missouri vs. Kansas Gas Company*, 265 U. S., 298. Page 90.

Point I.

The Public Service Company Law, as construed and applied by the Public Service Commission of Pennsylvania in the order affirmed by the judgment of the Supreme Court of Pennsylvania, is an unconstitutional attempt to regulate interstate commerce.

(Many other questions arising under the laws of the State of Pennsylvania were considered at length in the opinions of the commission, of the Superior Court and of the Supreme Court of Pennsylvania, but had no federal aspect.)

A. The undisputed facts bearing upon the federal question.

The Peoples Natural Gas Company, a Pennsylvania corporation, every share of stock of which belongs to the Standard Oil Company of New Jersey, has been purchasing natural gas for years from the Hope Natural Gas Company, a West Virginia corporation (all of whose stock is owned by the Standard Oil Company of New Jersey). The natural gas so purchased is produced in the State of West Virginia from wells owned by the Hope Company. It is the property

of a West Virginia corporation. The contract provides that the Hope Company shall bring the gas through pipes belonging to it to the Pennsylvania-West Virginia state line and there "deliver" it into the pipes of the Peoples Natural Gas Company. The gas is "transported" by its own pressure. It flows through the pipes at a very high rate of speed, depending upon the pressure. Using the word "delivery" in a different sense, the gas delivers itself. The Peoples Natural Gas Company pays a certain price for the gas thus delivered to it, the amount being ascertained by meter measurement at the state line.

The Peoples Natural Gas Company transports this gas (or it transports itself) in the company's pipes to various points in Pennsylvania, where it is sold by the Peoples Company. In the course of this transportation some Pennsylvania gas becomes mingled with the West Virginia gas (an entirely immaterial point much stressed by the defendants in error until this court decided *Public Utilities Commission vs. Landon*, 249 U. S., 236, but never insisted upon since). At the time the testimony was taken about 66-2/3 per cent. of the entire supply of natural gas of the Peoples Company was West Virginia gas and the remainder Pennsylvania gas. Of the gas which the Peoples Company sold to the Johnstown Fuel Supply Company

about 75 per cent. was imported from West Virginia.

The Peoples Natural Gas Company was and is engaged in the business of supplying natural gas to local consumers in various municipalities where it has pipes, and the largest portion of this West Virginia gas is so sold at the burner tips to its local consumers. For a great many years it sold the rest of its gas to a local natural gas company, the Johnstown Fuel Supply Company, which had the local distributing system necessary to enable it to supply local consumers in the city of Johnstown, and did supply local consumers in the city of Johnstown with gas at their burner tips. The gas which it so supplied was purchased under a contract with the Peoples Company which provided that the Peoples Company would furnish it with a supply of gas at a point of connection with its main line of pipe some 500 feet distant from (outside of) the city limits of Johnstown. Judge Linn, of the Superior Court, in his dissenting opinion stated the facts in this way (R. 284, fol. 62): "In Johnstown the local distribution is by the intervenor, the Johnstown Fuel Supply Company, which receives the gas that can only be obtained by commerce among the states and sells it to over 11,000 consumers."

Under the contract between these two corporations, which was made at arm's length and between two groups of people who thoroughly understood the natural gas business, it was provided that the Johnstown Company might terminate the contract and get its gas elsewhere if the Peoples Company failed to furnish it with an adequate supply, and, conversely, that the Peoples Company might terminate the contract at any time after six years on one year's notice. These provisions were, under the undisputed evidence, a *sine qua non* without which neither of the parties would have executed the contract. This contract was in existence from August 12, 1909, to October 1, 1920, and was lawfully ended by a notice given by the Peoples Company on July 25, 1919 (R. 203), that it would not furnish gas after October 1, 1920. Since the latter date the Peoples Company has been compelled by the mandate of the Public Service Commission of Pennsylvania to furnish and deliver to the Johnstown Company gas which can only be obtained as above described in interstate commerce.

B. THE GAS WHICH PLAINTIFF IN ERROR IS REQUIRED TO SUPPLY UNDER THE MANDATE OF THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA IS A COMMODITY IN INTERSTATE COMMERCE.

It would seem to require no elaborate argument to establish the proposition that the purchase of natural gas in West Virginia by a citizen of Pennsylvania and its sale in Pennsylvania is interstate commerce and that when the Public Service Commission of Pennsylvania says to the importer of the gas, "You must sell this gas to a person whom we name and at a price which we fix," it is a direct interference with interstate commerce.

We submit that the proposition is so thoroughly foreclosed by the decisions of this court that the question is no longer open for discussion.

West vs. Kansas Natural Gas Co., 221 U. S., 229;
Public Utilities Commission vs. Landon, 249 U. S., 236;
Pennsylvania Gas Co. vs. Public Service Commission, 252 U. S., 23;
United Fuel Gas Co. vs. Hallanan, 257 U. S., 277;
Pennsylvania and Ohio vs. West Virginia, 262 U. S., 553;
Missouri vs. Kansas Gas Co., 265 U. S., 298.

The facts and rulings of this court in these cases are as follows:

In *West vs. Kansas Natural Gas Co.,* the state of Oklahoma had attempted by statute to prohibit foreign corporations from building pipe lines across highways and transporting natural gas therein to points outside the state. That statute was held to be an unconstitutional interference with interstate commerce.

In *Public Utilities Commission vs. Landon* it was held that a vendor of natural gas, imported from another state, to independent local gas companies, which retailed the gas to their consumers, had no standing to enjoin state regulation of the rates charged by the local companies for their service to consumers, since such regulation was not a burden upon the interstate business of the vendor.

In *Pennsylvania Gas Co. vs. Public Service Commission* it was held that the transmission and sale of natural gas produced in Pennsylvania and transported and furnished directly at the burner tips to consumers in New York was interstate commerce, but that, nevertheless, because of its local character, and in the absence of any contrary regulation by Congress, it was subject to regulation as to rates by the Public Service Commission of New York.

In *United Fuel Gas Co. vs. Hallanan* natural gas was collected and purchased in West Virginia by the complainant, a pipe line company, and moved through its pipes and into the pipes of connecting companies to which it sold and delivered the gas within the state, in continuous streams, ultimately destined beyond the state. Some of the gas was in fact consumed locally. It was held that the state had no power to tax the transportation of the gas, since it was a commodity in interstate commerce.

Pennsylvania vs. West Virginia involved a statute of the state of West Virginia which required that those producing and transporting natural gas in that state should, in its sale and disposal, accord a preferred right of purchase to consumers in that state over consumers in other states. Since this requirement would necessarily operate to withdraw a large volume of gas from an established interstate current whereby it was supplied in other states to consumers there, it was held that the statute was an unconstitutional interference with interstate commerce.

Finally in *Missouri vs. Kansas Natural Gas Co.*, it was held that the business of piping natural gas from one state to another and selling it to independent distributing companies, which sold it locally to consumers, was interstate commerce,

although some of the gas was produced in the state in which it was sold; but that, unlike the case where the gas was supplied directly to consumers in interstate commerce, such business was not of such local character as to entitle the state to regulate it.

C. THE SALE AND DELIVERY OF GAS WHICH IS BEING TRANSPORTED IN INTERSTATE COMMERCE BY THE PEOPLES NATURAL GAS COMPANY TO THE JOHNSTOWN FUEL SUPPLY COMPANY IS NOT INTERSTATE COMMERCE OF SUCH A LOCAL NATURE AS CAN BE REGULATED BY THE STATE IN THE ABSENCE OF CONGRESSIONAL ACTION.

This question also is foreclosed by the decisions of this court:

Public Utilities Commission vs. Landon, 249 U. S., 236;
Pennsylvania Gas Co. vs. Public Service Commission, 252 U. S., 23;
Missouri vs. Kansas Gas Co., 265 U. S., 298.

One of the three, *Public Utilities Commission of Kansas vs. Landon*, 249 U. S., 236, was decided on March 17, 1919. In that case the Public Utilities Commission of Kansas had undertaken to fix the price at which many local gas distributing companies sold their gas. The Kan-

sas Natural Gas Company was a producing company which by separate agreements undertook to supply many local companies with gas for ultimate sale to consumers. The receivers of the producing company sought to enjoin the action of the commission because the price that it was to receive for its gas from the local companies was a certain percentage of their sales. It appeared in the case that of the gas handled and sold by the producing company 94 per cent. was imported from Oklahoma and the other 6 per cent. was Kansas gas, and that of this mixture of gas 44 per cent. was sold to customers in Kansas, and 56 per cent. to customers in Missouri.

The court below (as stated by Mr. Justice McReynolds, p. 244) held that the transportation of natural gas and its disposition and sale to consumers through the distributing companies was interstate commerce of a national character; that the commission's actions interfered with the establishment and maintenance of reasonable sale rates, and thereby burdened interstate commerce and took the receivers' property without due process of law.

This court decided that the service rendered by the Kansas Company in producing gas in Oklahoma and Kansas and delivering the mingled gas to local companies in Kansas was interstate commerce, with which the Public Service Com-

mission had no authority to interfere; but "that the sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises" did not constitute any part of interstate commerce (p. 245). Mr. Justice McReynolds says again on the same page, "Interstate movement ended when the gas passed into local mains." This case necessarily decides that the commingling of Kansas gas with Oklahoma gas did not affect the question. This court knew that the question was raised; it was argued by counsel (see p. 240); it is referred to by Mr. Justice McReynolds in his statement of facts (bottom p. 242); but this court did not consider the question of sufficient importance even to require discussion. It is therefore plain that the addition of some Pennsylvania gas does not operate to deprive the resulting mixture of its interstate character.

The second case is *Pennsylvania Gas Company vs. Public Service Commission of the State of New York*, 252 U. S., 23. In that case natural gas was produced in Pennsylvania, was conveyed into the State of New York and there furnished directly to consumers. It was held by this court that, while this gas business was interstate commerce up to the burner tips, the prices that should be charged by the company for its local distribution to consumers was a matter of

local interest and was within the power of the state to control until Congress acted. Mr. Justice Day, in delivering the opinion of the court, says (p. 28):

> "We think that the transmission and sale of natural gas produced in one state, transported by means of pipe-lines and directly furnished to consumers in another state, is interstate commerce within the principles of the cases already determined by this Court: *West vs. Kansas Natural Gas Co.*, 221 U. S., 229; *Haskell vs. Kansas Natural Gas Co.*, 224 U. S., 217; *Western Union Telegraph Co. vs. Foster*, 247 U. S., 105."

Then, on the same page, he distinguishes the *Landon case* by stating that where the importing company sells gas to local companies, the retailing of the gas by the local companies is *intra*-state commerce, and that *inter*-state commerce ends at the point of connection between the pipes of the two companies. He explains that in the case under consideration there was no sale to a local company, but the first sale was to the consumer at the burner tip, and that therefore it was interstate commerce up to the burner tips.

He then proceeds to discuss (p. 29) the amount of control that the state may exercise,

and says that this extends "to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending federal intervention."

Then turning to the case before him, he says (bottom p. 30 and top p. 31):

> "The thing which the State Commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, and pertains to the furnishing of natural gas *to local consumers* within the City of Jamestown in the State of New York. The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the state, *nevertheless the service rendered is essentially local, and the sale of gas is by the company to local consumers who are reached by the use of the streets of the city in which the pipes are laid*, and through which the gas is conducted to factories and residences as it is required for use. The service is similar to that of a local plant furnishing gas to consumers in a city.
>
> *This local service* is not of that character which requires general and uniform regulation of rates by congressional action, and which has always been held beyond the power of the states, although Congress has not legislated upon the subject. While the manner in which the business is conducted

> is part of interstate commerce, *its regulation in the distribution of gas to the local consumers is required* in the public interest and has not been attempted under the superior authority of Congress." (Italics ours.)

In *Missouri vs. Kansas Natural Gas Company*, a case indistinguishable upon its facts from the present case, the Kansas Natural Gas Company, which was sought to be subjected to the regulation of the Public Utilities Commissions of Missouri and Kansas, respectively, was engaged in producing and buying natural gas, mostly in Oklahoma but some in Kansas, and transporting it through pipe lines into Kansas and thence into Missouri, and in each state selling and delivering it to distributing companies, such as the Johnstown Fuel Supply Company in the present case. The gas originating in Kansas was mingled for transportation in the same lines with that originating in Oklahoma, just as in the instant case gas originating in Pennsylvania is mingled with gas originating in West Virginia. Likewise, as in the instant case, the pipe lines were continuous from the wells to the places of delivery. It was held in each of three cases, arising on these facts, that the Kansas Natural Gas Company was not subject to the regulation of the states in question because of the interstate character of its business. The rationale of the de-

cisions was stated by Mr. Justice Sutherland as follows (pp. 308-9-10):

> "The contention that, in the public interest, the business is one requiring regulation, need not be challenged. But Congress thus far has not seen fit to regulate it, and its silence, where it has the sole power to speak, is equivalent to a declaration that that particular commerce shall be free from regulation. See *Robbins vs. Shelby County Taxing District*, 120 U. S., 489, 493. With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to state regulation. *Public Utilities Comm. vs. Landon, supra*, p. 245. In such case the effect on interstate commerce, if there be any, is indirect and incidental. But the sale and delivery here is an inseparable part of a transaction in interstate commerce—not local but essentially national in character—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. It is as though the Commission stood at the state line and imposed its regulation upon the final step in the process at the moment the interstate commodity entered the State and before it had become part of the gen-

> eral mass of property therein. * * * But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different States. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The paramount interest is not local but national, admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental nonaction, may be highly necessary to preserve equality of opportunity and treatment among the various communities and States concerned."

This decision meets every argument used by the Supreme Court of Pennsylvania. In justice to that court, however, it should be added that this decision was rendered after the opinion of that court was written.

A further discussion of this feature of the case extends to p. 53 of this brief.

In *Attleboro Steam & Electric Co. vs. Public Utilities Commission,* 129 Atlantic, 495, decided June 18, 1925, the Supreme Court of Rhode Island analyzes and follows the rule laid down by this court in the cases cited. It reaches exactly the opposite conclusion from that which

the Supreme Court of Pennsylvania reached in this case, and we call the attention of this court to the opinion of Judge Stearns in that case as a better demonstration than we could make of the misconception which the Supreme Court of Pennsylvania has made of the decisions of this court.

The facts in that case are indistinguishable from the facts in the present case, except that electrical energy, instead of natural gas, was the subject matter of the interstate commerce concerned. Judge Stearns says, page 497:

> "The sale and transportation of electricity generated in one State, and conveyed directly to a purchaser in another State, is interstate commerce. It is the essential nature of the service rendered which determines whether commerce is interstate or intrastate; if the actual movement is interstate, *it is immaterial that the place of delivery or the place at which title passes, is at the State line.* The transportation of the electricity is continuous from this State to its ultimate destination in another State and consequently is interstate commerce." (Italics ours.)

In *Sonneborn Brothers vs. Cureton,* 262 U. S., 506, this court discussed the validity of a state occupation tax levied on all wholesale dealers in oil and measured by a percentage of the gross amount sales made within the state. It was held

that this occupation tax was valid when applied to local sales in the original packages of oil previously shipped into the state and stored by the dealer as part of his stock in trade; and it was decided, with reference to immunity from state taxation, that the distinction between imports and articles in the original packages is that, in the one case, the immunity attaches to the import itself before sale, while in the other it depends on whether the tax regulates or burdens interstate commerce. It was further held as to commodities in interstate commerce, that whether the sales tax is valid or not depends upon whether the article was brought into the state to fill prior orders, in which case it was not taxable. On the other hand, if it was first brought into the state, and had come to rest at its destination, and was subsequently sold on orders thereafter received, it could lawfully be subjected to the state tax, because this was not a regulation of interstate commerce or a burden thereon.

While the facts of this case differ from those of the instant case, the principle is the same, and if the same principle is applied to the present case, it is plain that the order of the Pennsylvania Public Service Commission was unconstitutional. So long as the gas was sold and delivered by the Peoples Company to the Johnstown Company under the contract, the gas was

clearly brought into the state for the purpose of complying with the Peoples Company's obligation to procure the gas which it was bound to deliver. It was obtained for the very purpose of filling an existing "order." The present situation is, of course, much more favorable to us. The gas is now being brought into the state by the Peoples Company in order to comply with the mandatory order of the Public Service Commission; and what we seek here is that the Peoples Company shall be relieved from the obligation to import the gas necessary to comply with this order. It is being imported, not to perform a contract, but to comply with a legislative mandate of the State of Pennsylvania—a command to engage in interstate commerce.

It will thus be seen that the controlling question as to state power to regulate interstate commerce is whether the service is local in its character. What the local situation was in the cases cited is definitely stated in the reports. In this case the facts of the local situation are not controverted. They are stated in the answer of the Peoples Company filed September 14, 1920 (Record 207, fol. 842 a), as follows (R. 211, fol. 848 a):

> "The gas so produced by the West Virginia corporation passes through its pipes in West Virginia and through the pipes of the Peoples Natural Gas Company in Pennsylvania in a continuous flow and is delivered

> by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company's main and by it, after the pressure has been reduced and regulated, distributed through its system of distribution pipes and services to its customers."

As this averment was never controverted, and was conceded in all the arguments to be an accurate statement of the facts, and doubtless will not be controverted here, it seems unnecessary to extend this brief by quoting or referring to the evidence which supports it.

In the cases we have cited, particularly the case of *Pennsylvania Gas Company vs. Public Service Commission*, 252 U. S., 23, it is held that the interstate movement of the gas continues to the burner tips of the consumers, but *becomes local in character in the distributing lines.* Why the transmission of the gas loses its *national* character is explained by the change in control of the gas at the city gate. For example, in the instant case, after the gas in question passes at the city gate of Johnstown into the distributing system of the Johnstown Company, control by the Peoples Company ceases. Delivery is completed; the gas stands in the mains of the distributing company and the service lines of the consumers, and is exclusively controlled by the local distributing company and the consumers,

precisely as gas of an artificial gas company in Johnstown might be. These changed conditions give the interstate gas its local character. Such conditions are more fully described in *West Virginia-Maryland Gas Company vs. Towers,* 134 Md., 137. In this case it was noted that after the gas is delivered into the distributing systems, in the localities where consumed, its pressure must be reduced; control of its flow is lost by the importing company, and the gas is in effect stored in the distributing system for use at the will of the consumers.

In that case it is said (pp. 141, 142):

"It (the gas) is then transported through said pipe lines across the West Virginia-Maryland state line into Maryland; and, as the gas can not there be served to the consumer at the high pressure necessary for its transmission through the main lines, its pressure is reduced when it reaches the gates of the community where it is to be distributed to the consumers by means of what is known as a regulator, and the gas is then carried through the community in low pressure mains with which the various service lines are connected * * *. When the gas is being used by the individual consumer it is constantly in motion from the time it leaves the wells until it is so used; but, at the point where the service line enters the consumer's premises there is located a stop-cock, by the

turning of which the gas is permitted or prevented from entering the premises and on the service pipe within the owner's premises and on the inlet side of the meter there is a stop-cock by which the consumer can either cut off or control the flow of gas into the meter. Immediately beyond this latter stop-cock and before said gas reaches the burner of individual consumer it passes through a gas meter operated by the pressure of gas; and at each burner on the premises there is a stop-cock, by the turning of which gas is permitted or prevented from entering the burner."

The Court held the gas, once in the distributing system, while although still in interstate movement, had lost its national character, and that the state authorities could regulate the rates, saying (pp. 144, 145):

"We must consider the effect upon it (the gas) when it leaves the main line of its travel and enters into the intermediate lines for sale and distribution, and whether thereafter it is national in its nature.

It is admitted that at such time its pressure is reduced, and it is reduced because the pressure in the main pipes is too high for service to the consumers. At this point it is separated from the other gas in the main pipe and forced into the intermediate lines, from whence it cannot return to the main

line, but remains in such intermediate lines to be consumed when needed.

Whether the gas is separated from the general bulk of gas and confined in the intermediate pipe lines, where it can not return to the main pipe line and where it must remain until consumed, or whether it is so separated and stored in tanks awaiting consumption, the effect is the same, in our opinion, in determining the question whether the original package has been broken and the gas mixed with the common mass of property in this state. There may be a constant movement of the molecules of the gas, but we do not see how this movement, because of the peculiar properties of the article, can affect the question to be determined.

It also, before reaching the consumer, has to pass not only through pipes laid in the streets of the towns or villages, which is done under rights acquired from local authorities, but through pipes belonging to the owner of the premises upon which the gas is consumed. These facts all aid in characterizing the transaction as being of a local, and not of a national nature."

The foregoing language is included in a longer quotation appearing on pages 53-57 of the brief of the City of Johnstown filed in the Supreme Court of Pennsylvania. The facts in the instant case, showing loss of control of every

foot of gas at the city gate of Johnstown, do not exist at the West Virginia state line, or at any other point, so as to take from the interstate transportation of the gas its national character. These are the facts which this court undoubtedly had in mind in the *Pennsylvania Gas case,* when it said, as quoted in the same brief of the Johnstown Fuel Supply Company, pp. 61, 62:

> "The thing which the state commission has undertaken to regulate while part of an Interstate transmission *is local in its nature* and pertains to the furnishing of natural gas to local consumers within the City of Jamestown in the State of New York. The pipes which reach the customers served are supplied with gas directly from the main of the company *which brings it into the state,* nevertheless the *service rendered is essentially local,* and the sale of gas is by the company to local consumers who are reached by the use of the streets of the city in which the pipe lines are laid, etc. * * * The service is similar to that of a local plant furnishing gas to consumers in a city.
>
> *This local service is not of that character which requires general and uniform regulation of rates by Congressional action,* and which has always been held beyond the power of states, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of Interstate Commerce *its regulation*

in the distribution of gas to the local consumers is required in the public interest and has not been attempted under the superior authority of Congress."

(The italics of the Johnstown brief are retained.)

It has been authoritatively said by this court many times that the question whether a commodity is an intrastate or an interstate commodity is a "practical, not a theoretical conception," and does not depend upon "the witty diversities of the law of sales," which means that it depends upon the substantial character of the movement. The real question is whether the regulation is a regulation of a local service. It is unthinkable that a regulation of the business carried on by the one who imports gas and who has sold it before any local service begins, can be a regulation of a local service. We may be pardoned the repetition that that is exactly the decision in the *Landon case*. The company which imported the gas and brought it to the city gates had not even a standing to raise the question whether the regulation of the local service performed by the purchaser was a regulation of or burden upon interstate commerce. It had finished its connection with the commodity before the local service began. But when the state sought to regulate the rates charged by the importing company itself, it was speedily demonstrated in this court

that that could not be done. *Missouri vs. Kansas Gas Company.*

In the instant case all the local service was admittedly performed by the Johnstown Company after the Peoples Company had fully complied with its obligation, either under the original contract or under the mandate of the Public Service Commission. The Peoples Company owns no pipe nearer to the city of Johnstown than 500 feet. All the pipes in Johnstown, which make the service there possible, belong to the Johnstown Company. The pressure is reduced by the Johnstown Company so as to put the commodity into a condition in which it can be used. The rates which consumers pay are fixed by the Johnstown Company. The franchise under which the streets are occupied by the pipes, and which alone makes the local service possible, is a franchise granted to the Johnstown Company; and the statutory duty to supply the public of Johnstown is a statutory duty imposed upon the Johnstown Company alone. Finally, the gas is in the exclusive control of the Johnstown Company after it reaches the point of connection, 500 feet from the city line. Up to that time the Peoples Company may deliver it, or not deliver it; it may keep its contract, or it may defy the order of the Commission as to this gas. After the gas has passed the city gate its control is physically en-

tirely beyond the power of the Peoples Company; the Johnstown Company then does what it pleases with it; it delivers it or does not deliver it; it discriminates or does not discriminate between its customers; it renders an efficient or inefficient service, as it pleases. Whether it will make a connection for any particular customer so that he can obtain gas from the pipe by opening or closing the stop-cock on his premises, whether he must not only pay for the gas he uses but also a readiness-to-serve charge—with these and all questions relating to local service the Peoples Company has nothing to do.

We submit that the reasoning of the Supreme Court of Pennsylvania is fallacious, that it misunderstood the decisions of this court, and that its decision is wrong.

D. THE REASONS GIVEN BY THE SUPREME COURT OF PENNSYLVANIA FOR ITS DECISION ARE FALLACIOUS.

As we read the opinions of the commission and of the Superior Court on the first appeal, which involved the power of the commission to compel the Peoples Company to file a tariff, the justification for interference was based upon the notion that the Peoples Natural Gas Company and the Johnstown Fuel Supply Company were jointly engaged in supplying natural gas

in the city of Johnstown, and also that the gas had ceased to be an interstate commodity because of the mingling of Pennsylvania gas with the West Virginia gas in the pipes. *Public Utilities Commission vs. Landon,* 249 U. S., 236, and *Missouri vs. Kansas Gas Company,* 265 U. S., 298, disposed of both these propositions.

When the order of the commission now in question, compelling continuance of the service was appealed, the Superior Court affirmed—two of the judges dissenting. The Supreme Court affirmed the Superior Court by a unanimous decision. It based its conclusion upon two new grounds. The first was that supplying gas under the contract between the Peoples Company and the Johnstown Company while that contract was in existence and, after its termination, under the mandate of the Public Service Commission never was and is not now interstate commerce, because the gas was delivered to the Peoples Company by the Hope Company at the state line. The second ground was that if such supplying of gas is a transaction in interstate commerce, it is a service of such a local nature as to be subject to state control in the absence of regulation by Congress. The trouble with both propositions is that they are unsound in law and unfounded in fact, and have been foreclosed by so many decisions of this court that they are no longer open to question. The second ground has

been shown to be unsound (*supra*, p. 35 *et seq.*); the basis of the first, namely, that the delivery of the gas at the state line robs it of its interstate character, is equally fallacious.

We desire at the outset to point out a peculiarity in the situation, stated by Judge Linn in his opinion (R. 284, fol. 63):

> "The selling company in West Virginia, the Hope Natural Gas Company, owns the pipe line through which the gas is conducted in West Virginia to the state line; appellant owns the pipe line on the Pennsylvania side of the state line, *a boundary of course without area, and unable to support either receiving or delivering equipment;*" (Italics ours).

(1) THERE IS NOTHING IN THE SUGGESTION OF THE PENNSYLVANIA COURTS THAT THE CONTRACT BETWEEN THE PEOPLES COMPANY AND THE HOPE COMPANY SHOULD HAVE BEEN PUT IN EVIDENCE *in extenso, verbatim et literatim.*

When this case came into the Superior Court and then into the Supreme Court of Pennsylvania on appeal from the order of the Public Service Commission it came, as required by the Pennsylvania Public Service Company Law, upon a certified copy of the transcript of the evidence taken before the commission. There was not in the transcript a copy of the written

contract (or, to state it now with complete accuracy, the contracts) between the Peoples Company and the Hope Company. It is true that there is a formal written contract between the two companies, modified from time to time by supplementary papers, and that none of those papers is in evidence. What is in evidence is a verbal statement of those provisions in the contract which relate to the question of interstate commerce. This evidence was introduced by the complainants by oral examination of Mr. Pew, who was thoroughly familiar with the contents of the papers and was complainants' witness, called by them for the purpose of proving the contract. No objection was made by any one that this was not the best evidence of the contract. Everybody admits that it is accurate, and that Mr. Pew stated everything in the contract which any party deemed material to the controversy. If the court below had decided this case upon the ground that the original written contract was not in evidence, it would have been wrong, because the "best evidence rule" is intended solely for the protection of the parties; they are at perfect liberty to waive it. This discussion, however, is in the last analysis irrelevant, because both the Superior Court and the Supreme Court decided the interstate commerce question upon the parol evidence of the contract which was in the case.

(2) NATURAL GAS PURCHASED BY THE PEOPLES COMPANY FROM THE HOPE COMPANY IN WEST VIRGINIA AND SOLD TO THE JOHNSTOWN COMPANY AT JOHNSTOWN, PENNSYLVANIA, IS A COMMODITY IN INTERSTATE COMMERCE. THE PLACE OF DELIVERY TO THE PEOPLES COMPANY IS IMMATERIAL.

In order to meet squarely the argument of the Supreme Court of Pennsylvania, we desire first to call the attention of the court to Mr. Justice Simpson's opinion, beginning on page 305 of the Record, about the middle of folio 104. Mr. Justice Simpson says:

> "As already pointed out, the only evidence regarding appellant's acquisition of gas outside of Pennsylvania, is that it was purchased 'in West Virginia, at the West Virginia State Line, by meter measurement.' Exactly what this means is not clear, and the burden of making it so was upon appellant, which is seeking thereby to obtain immunity from a just regulation by the State of its incorporation. It certainly can mean no more than that the gas was bought in West Virginia, for delivery at the State line, the quantity to be there ascertained by meter measurement. This being so, the interstate shipment ended at that line, where the parties originally intended it should end, and appellant's only other right, under the interstate commerce clause, was to there sell the

article in bulk: Illinois Central R. R. Co. vs. Fuentes, 236 U. S., 157, 163; Western Union Telegraph Co. vs. Foster, 247 U. S., 105, 113.

No authority suggests, and no principle calls upon us to say, that an entire State is the destination of an article shipped to a point therein, and that a purchaser has the right to carry it far beyond the place where the interstate shipment in fact ended, and sell it in installments, considering it as if still in interstate commerce, in each of 78 different localities. The exemption from state regulation being limited as stated, it necessarily follows, that, under the only contract which we are advised existed as to the gas obtained from the Hope Company, its interstate character ended at the State line and thereafter it was wholly intrastate; and this is, in effect, the principle decided in Gulf, Colorado & Santa Fe Railway Co. vs. Texas, 204 U. S., 403: Chicago, Milwaukee & St. Paul Railway Co. vs. State of Iowa, 233 U. S., 334, and the cases in their train."

One sees at once that what the Supreme Court of Pennsylvania held was that this is interstate commerce on the West Virginia side, but that it is not interstate commerce on the Pennsylvania side, because they thought the interstate shipment ends at the state line. They next held that an entire state cannot be the des-

tination of an article shipped and that the article imported cannot be split up and delivered in 78 different localities in the state of destination without ceasing to be a commodity in interstate commerce and that therefore the interstate commerce ends at the state line. In other words, they deduced that because the gas was split up *at various points in the interior of the state, the interstate character of the gas ended at the state line,* although there was no splitting up at the state line. Exactly what Mr. Justice Simpson and the Supreme Court of Pennsylvania mean by the ending of an interstate shipment is not explained and we do not know. There is no physical interruption of the transit at "the State line." Judge Linn had the correct thought in his mind when he called attention to the fact that the State line has no lateral extension. It is purely a geometrical conception whose only property is length. Nothing happens at the State line except that natural gas which is flowing through a gas pipe, which originated in West Virginia and which was bound for points in Pennsylvania, passed over this imaginary line at a high rate of speed, possibly sixty miles an hour. With our limited knowledge of physics, counsel assume that each molecule of gas vibrates back and forth many times over the State line, with inconceivable rapidity, before it finally remains in Penn-

sylvania. And yet the Supreme Court of Pennsylvania was able to hold that the interstate shipment ended at the State line.

The novel argument advanced by the Supreme Court of Pennsylvania runs counter to the decisions of this court.

In determining the question of interstate commerce it is not a matter of any importance where the title to the article passes. It is inconceivable that if a grocer in Pittsburgh should buy a barrel of sugar in Brooklyn and transport the sugar from Brooklyn to Pittsburgh it would make any difference whether the title passes at the sugar refinery in Brooklyn, or when it crosses the North River into New Jersey, or when it crosses the Delaware River into Pennsylvania, or when it gets to the grocery store in Pittsburgh.

In *Gulf, Colorado & Sante Fe Railway Co. vs. Texas,* 204 U. S., 403, the court, by Mr. Justice Brewer, said, page 412:

> "It is undoubtedly true that the character of a shipment, whether local or interstate, is not changed by a transfer of title during the transportation."

It has already been held by this court in two cases that this same flow of gas through the pipes of the Hope Natural Gas Company out of

West Virginia into Pennsylvania is interstate commerce.

The first of these is *United Fuel Gas Co. vs. Hallanan*, 257 U. S., 277. In that case the question before the court was whether the United Fuel Gas Company could be taxed by the State of West Virginia upon the transportation by pipe line of natural gas, partly used within the state and partly sent out of the state, but all commingled in the same line. The gas was delivered in West Virginia to purchasers which transported most of it out of the state; e. g., 99 per cent. of the gas sold to the Columbia Gas & Electric Company, 88 per cent. of the gas sold to the Pittsburgh-West Virginia Company, and 67 per cent. of the gas sold to the Hope Natural Gas Company (the company from which the Peoples Company purchases gas in West Virginia) was carried out of the state (p. 281).

It was held that the tax could not constitutionally be imposed upon the transportation of this gas, of which a part was to be locally consumed, since the "major transportation" was one in interstate commerce, and this although the transportation sought to be taxed began and ended within the state. It is notable that some of the gas so held to be a commodity in interstate commerce was delivered in West Virginia to the

Hope Natural Gas Company for delivery to the Peoples Company under the very contract here in question. Mr. Justice Holmes says in the opinion (p. 281):

> "In short the great body of the gas starts for points outside the State and goes to them. That the necessities of business require a much smaller amount destined to points within the State to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff, as owner of the gas, and the purchasers after they receive it might change their minds before the gas leaves the State and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the states and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow *ending as contemplated from the beginning beyond the state line. Ohio R. R. Commission vs. Worthington,* 225 U. S., 101, 108. *United States vs. Reading Co.,* 226 U. S., 324, 367. *Western Union Telegraph Company vs. Foster,* 247 U. S., 105, 113. We have mentioned only such facts as are sufficient for our decision, and have not

noticed other objections urged against the law. What we have stated seems to us enough to condemn it as applied to this case." (Italics ours).

As shown by the language italicised, this court held that the gas flowing through the pipes of the Hope Natural Gas Company, and which is here in controversy, is a commodity in interstate commerce, not *up to* the West Virginia state line, but beyond it, in Pennsylvania. The gas cannot be interstate gas in West Virginia without also being interstate gas in Pennsylvania, up to the points of destination, to which it moves with "no break, no period of deliberation," but in a steady flow.

The same result was reached by this court in the case of *Pennsylvania and Ohio vs. West Virginia*, 262 U. S., 553. In that case, in which this court held that West Virginia was without power to prevent the exportation of natural gas produced in that state into other states for consumption, the Commonwealth of Pennsylvania offered in evidence and relied in part upon the same agreement between the Hope Natural Gas Company and the Peoples Natural Gas Company under which this gas is obtained by the Peoples Company, to show that interstate commerce in natural gas was being interfered with by West Virginia. The contract appears as

Pennsylvania Exhibit No. 17, at page 225 of Volume I of the printed transcript of record in this court. On page 190 the record shows that the Hope Company's lines do not cross the state line but go *to* the state line and there connect with the Peoples Company's lines, and that the Hope Company sells the gas there. Many other identical contracts between the Hope Company and other natural gas companies were put in evidence, all of them likewise calling for delivery to the purchasing company at the state line, the title passing in all or most instances at the state line.

In fact, in its bill (Par. VII.), Pennsylvania listed as supplied with West Virginia gas the cities of Pittsburgh and Johnstown, each of which is supplied with gas obtained from the Hope Company by the Peoples Company. In Paragraph X, it complained that the West Virginia law burdened interstate commerce. Yet its creature, the Public Service Commission, here contends that this gas has no interstate character in Pennsylvania.

When this court held that West Virginia was without power to interfere with the interstate flow in which the gas here involved was included, it forever foreclosed the contention of Pennsylvania that it has power to do the converse of what it successfully contended was forbidden to West Virginia, namely to compel the Peoples Company to withdraw natural gas

from West Virginia and sell it in Pennsylvania to customers which Pennsylvania chooses and at prices which Pennsylvania determines.

The same question was ruled on other facts in *Ohio R. R. Com'n vs. Worthington,* 225 U. S., 101. In that case coal, produced and mined in Ohio, was transported by rail to the lake front at Huron, Ohio, and there remained until the owner made up his mind whether he would sell and ship it up the lakes in interstate commerce or would sell it in the city of Huron for local use. It was held that the fact that a part of the coal was sold in Huron, Ohio, and used there, and a part shipped up the lakes for sale and use in some other state, did not confer jurisdiction upon the Railroad Commission of Ohio to fix the railroad freight rate on all the coal from the mines to Huron; and that the rate on such part of it as eventually was shipped up the lakes in interstate commerce was subject to the jurisdiction of the Interstate Commerce Commission and was beyond the control of the Ohio Commission. The real decision in that case was that the intrastate or interstate character of the coal depended upon its eventual destination, *although that destination was unascertainable when the shipment began,* and although the consignee obtained control of his coal at Huron.

Again, in *Baltimore & Ohio S. W. R. R. Co. vs. Settle,* 260 U. S., 166, Settle shipped lumber

from points in the South to Oakley, Ohio, and paid the interstate rate. He then reshipped the lumber from Oakley, Ohio, to Madisonville, Ohio, and paid the intrastate rate from Oakley to Madisonville. The sum total of the interstate rate to Oakley and the local rate from there to Madisonville was less than the interstate rate from the points of shipment in the South to Madisonville. It was held by this court that Settle must pay the higher interstate rate from the point of shipment in the South to Madisonville. Mr. Justice Brandeis says, page 171:

> "neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk is an essential of a through interstate shipment * * *. Where it is admitted that the shipment made to the ultimate destination had at all times been intended, these incidents are without legal significance as bearing on the character of the traffic."

And again, page 172:

> "The sole question, therefore, which could arise in this case was whether the movement actually entered upon at point of origin, and persisted in, was transportation of the lumber to Madisonville."

So in the case at bar, the movement of the gas actually began at the point of origin; it was

intended for delivery to the Johnstown Company at the city gate of Johnstown; it was delivered pursuant to a settled course of business between the two companies under the agreement of August 9, 1909, until that contract was cancelled on October 1, 1920; and since the latter date down to the present time, pursuant to the same course of business, it has continued to be so delivered by the Peoples Company under the order of the commission.

In *Western Union Telegraph Company vs. Foster*, 247 U. S., 105, this court decided that the transmission of stock exchange quotations by telegraph companies from New York into Massachusetts, and there relayed to the offices of subscribers to the service of the telegraph company, was interstate commerce beyond the power of Massachusetts to regulate. The stock exchange had reserved the right to disapprove the applications of subscribers to the service of the telegraph companies, and to direct the companies to discontinue the service, to prevent improper use of the quotations supplied. While the Hope Company does not in the present case exercise a censorship over the list of consumers of the Peoples Company, it does not appear that that makes any difference in the outcome. Certainly the transmission of the gas in the present case in

the "normal, contemplated and followed course is a transmission as continuous and rapid as science can make it" from the wells in West Virginia to the points of consumption in Pennsylvania.

To the argument that because the Exchange charged a flat rate and left it to the telegraph companies to find subscribers, the local service by the companies constituted a breaking of bulk and sale at retail, Mr. Justice Holmes replied (p. 113):

> "Neither that nor the intervention of an operator, *or of another company*, are in the least degree conclusive." (Italics ours.)

This plainly means that gas which changes hands in transit, as this gas does, does not thereby lose its interstate character until it reaches the point where, according to "practice, intent and the typical course," its physical movement ends.

Dahnke-Walker Milling Co. vs. Bondurant, 257 U. S., 282. In this case a Tennessee milling corporation had purchased grain in Kentucky which it intended to transport to and use in its Tennessee mill. The contract with the Kentuckian obligated him to sell to the Tennessee milling corporation a certain number of bushels of grain f. o. b. railroad cars at a certain town in

Kentucky. The price of grain went up, and the Kentuckian broke his contract and refused to deliver the grain. The Tennessee milling corporation sued him for damages. He set up as a defense that the Tennessee corporation had not complied with the Kentucky statute regulating the right of foreign corporations to do business. The Tennessee corporation replied that this *contract* was one relating to interstate commerce, and that it was not necessary for it to comply with the Kentucky statute. The Kentucky courts held that this was not interstate commerce. The Tennessee milling corporation appealed to this court, and this court reversed the lower court, holding that this *contract* of purchase was one that related to interstate commerce and was protected from any interference by a state. Mr. Justice Van Devanter says, beginning at the middle of page 290:

> "The commerce clause of the Constitution, Art. 1, Sec. 8, cl. 3, expressly commits to Congress and impliedly withholds from the several States the power to regulate commerce among the latter. Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse. Where goods in one State are transported into another for purposes of sale the

commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages. *Brown vs. Maryland,* 12 Wheat., 419, 446-447; *American Steel & Wire Co. vs. Speed,* 192 U. S., 500, 519. On the same principle, where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation. *American Express Co. vs. Iowa,* 196 U. S., 133, 143. This has been recognized in many decisions construing the commerce clause. Thus it was said in *Welton vs. Missouri,* 91 U. S., 275, 280: 'Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities.' In *Kidd vs. Pearson,* 128 U. S., 1, 20, it was tersely said: 'Buying and selling and the transportation incidental thereto constitute commerce.' In *United States vs. E. C. Knight Co.,* 156 U. S., 1, 13, 'contracts to buy, sell, or exchange goods to be transported among the several States' were declared 'part of interstate trade or commerce.' And in *Addyston Pipe & Steel Co. vs. United States,* 175 U. S., 211, 241, the court referred to the prior decisions as establishing that 'interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different

States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities.' In no case has the court made any distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last.

Lemke vs. Farmers Grain Co., 258 U. S., 50. In this case a North Dakota grain elevator company in the usual course of trade bought grain in the state, placed it in its elevator, mingled it with other North Dakota grain, loaded it on cars and shipped it to other states for sale, although it sold some of it in North Dakota. It was held that its entire business was exempt from the laws of North Dakota requiring it to obtain a license and pay a license fee.

If one cares to look a little further and ask the question when the immunity begins, and when it ends, the answer is that it begins as soon as the parties' minds have met in a contract. The states have no right to interfere with such a contract (*i. e.*, one between the Peoples Company

and the Hope Company). With reference to the physical importation or transportation of the articles contracted about, the immunity in its most restricted sense undoubtedly begins when the movement from the place where the articles are assembled in the exporting state begins. *Coe vs. Errol,* 116 U. S., 517; *Champlain Realty Co. vs. Town of Brattleboro,* 260 U. S., 366. The immunity continues until the articles have reached the point of destination and have been sold by the importer, or until the packages have been broken up *after their arrival at destination* and mingled with the general property of the state. *United Fuel Gas Co. vs. Hallanan,* 257 U. S., 277.

(3) THE ABSENCE OF CONGRESSIONAL REGULATION OF INTERSTATE COMMERCE IN NATURAL GAS IS NOT A DELEGATION OF POWER TO THE STATE TO REGULATE ANY SERVICE WHICH IS NOT OF A LOCAL NATURE, SUCH AS THE PUBLIC SERVICE COMMISSION REQUIRES THE PEOPLES COMPANY TO RENDER TO THE JOHNSTOWN COMPANY.

The opinion of the Supreme Court of Pennsylvania seems to be based upon a misapprehension of the action which Congress has taken. Congress has given the Interstate Commerce Commission power to regulate certain kinds of interstate commerce, but has excluded from its

power and from federal regulation interstate commerce in natural and artificial gas and water. When Congress amended the Interstate Commerce Act by the Act of June 29, 1906, c. 3591, Sec. 1, (34 Stat. at L. 584) they amended it so as to read:

> "That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, *except water and except natural or artificial gas,* by means of pipe lines or partly by pipe lines and partly by railroad and partly by pipe lines and partly by water—" (Italics ours.)

The absence of federal regulation of interstate commerce is not a delegation of authority to the states to interfere, but is a declaration that commerce shall be free from any regulation whatever.

Mr. Webster stated in his elaborate argument in *Gibbons vs. Ogden,* 22 U. S., 1, at top of page 18:

> "Congress makes such rules as in its judgment the case requires and those rules, whatever they are, constitute the system. All useful regulation does not consist in restraint; and that which Congress sees fit to leave free is a part of its regulation, as much as the rest."

This argument was adopted by this court in its opinion by Chief Justice Marshall when he says in the same case, page 209, that the regulation applies "to those parts which remain as they were as well as to those which are altered."

This court has repeatedly said the same thing, notably by Mr. Justice Field in *Mobile County vs. Kimball,* 102 U. S., 691, page 697:

> "Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists of the transportation, sale and exchange of commodities. Here there can of necessity be only one system or plan of regulations and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free."

When Congress enacted the exception of gas and water, it was dealing with a practical matter. It is never proper to assume that an Act of Congress has been passed in ignorance of the situation to which it relates. Congress knew that natural gas and water are products of nature; that no matter how enormous the expenditure, the ability of Public Service Companies to supply the commodities is limited by

the amount of water and natural gas provided by nature. The supply of water depends on the rain of heaven and the drought of summer, and the supply of natural gas is limited to the amount which nature has stored in the gas sands. Congress enacted that the public interest would be best served by leaving interstate commerce in these commodities free.

Accordingly in *Missouri vs. Kansas Natural Gas Co.*, 265 U. S., 298, this court declared, by Mr. Justice Sutherland, at p. 308:

> "The contention that, in the public interest, the business is one requiring regulation, need not be challenged. But Congress thus far has not seen fit to regulate it, and its silence, where it has the sole power to speak, is equivalent to the declaration that that particular commerce shall be free from regulation."

This case finally sets at rest any doubts which may have persisted that the act of Congress, excepting water and gas from federal regulation as it does, was intended to leave interstate commerce in those articles unfettered, and not by forced rules of construction to subject it to regulation by the states.

Lest some one should reassert that the mingling of some Pennsylvania gas with the West

Virginia gas in the pipes deprives the gas of its interstate character, it should be recalled that this question has frequently been decided by this court.

In *Lemke vs. Farmers' Grain Co.*, 258 U. S., 50, Mr. Justice Day stated the law at page 55 as follows:

> "It is true, as appellants contend, that after the wheat was delivered at complainant's elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sale in the Minneapolis market. That was the course of business, and fixed and determined the interstate character of the transactions."

See also Mr. Justice Holmes' opinion (*supra*, p. 62), in *United Fuel Gas Co. vs. Hallanan*, 257 U. S., 277. In that case, fully 21 per cent. of the gas was intrastate gas, being sold locally, and yet the mixture was free from state control.

See also the case of *Public Utilities Commission of Kansas vs. Landon*, 249 U. S., 236, where the fact of the mingling of the gas was referred to in Mr. Justice McReynolds' opinion, but was considered not worthy of discussion.

See further, *Missouri vs. Kansas Gas Co.*, 265 U. S., 298 (*supra*, p. 40) where the same mingled gas involved in the *Landon* case was held to be a commodity in interstate commerce.

We must not forget that it has been held by this court that a railroad train carrying one interstate passenger or one interstate parcel of freight is an interstate and not an intrastate train, and that the rights of its employees for compensation for injuries are governed by the Federal, not the State, statute. *Second Employers' Liability Cases*, 223 U. S. 1.

The Supreme Court of Pennsylvania seems to have been perplexed also by the question how a company which has a state charter can with any propriety raise any question as to its federal rights with respect to interstate commerce transactions. If we understand the law, "the boot is on the other leg." It is well established that "to carry on interstate commerce is not a franchise or privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the acquisition of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of such right." *Crutcher vs. Kentucky*, 141 U. S., 47, 57. It does not seem to

have been hitherto supposed that a domestic corporation has less federal rights than a natural person or a foreign corporation. For example, the Pennsylvania Railroad Company has a charter, granted by the State of Pennsylvania; it has no other source of its corporate rights; it exercises the power of eminent domain; it exercises every power which the State of Pennsylvania gave it; it not only can, but it must, engage in interstate commerce; it does not have two lines of track, one of which it uses for intrastate commerce, and the other for interstate commerce, and it does not keep the commodities separate on its trains or at its stations.

We have said designedly it not only can do this, but it must do this, and it must charge the rates for the interstate traffic which are fixed by the Federal Commission, and under the Federal Transportation Act if its intrastate rates are such as to interfere with its conduct of its interstate business the Interstate Commerce Commission can issue an order compelling it to carry its intrastate business at such rates as the Interstate Commerce Commission may fix. *State of New York vs. United States* 257 U. S., 591.

There is nothing in the suggestion that because the Peoples Company exercises the powers of a public service company under the laws of

Pennsylvania, it cannot escape regulation as to its interstate business. Such restriction upon the right of a corporation to engage in interstate commerce was attempted by Oklahoma; and it was held by this court that that could not be done. *West vs. Kansas Natural Gas Company,* 221 U. S., 229. In that case it was held that Oklahoma could not constitutionally withhold from foreign corporations wishing to engage in interstate commerce in natural gas within Oklahoma, the right to use the highways of Oklahoma and to exercise the power of eminent domain within the state.

Nor is there ground for the fear of the court (R. 305, fol. 104; R. 307, fols. 108, 109), that dire consequences must follow if the Peoples Company should escape the regulation here attempted. "Confidence in that regard may be reposed in the national legislature without any anxiety or apprehension arising from the fact that the subject-matter is not within the province or jurisdiction of the state legislature." *Crutcher vs. Kentucky, supra,* p. 58.

No matter on what pretext obligations are sought to be imposed by the state, the federal right of the citizen is always supreme.

POINT II.

The judgment of the Supreme Court of Pennsylvania, to which this writ of error was granted, is a final judgment within the meaning of Section 237 of the Judicial Code.

It was contended below by the defendants in error, and may perhaps be contended here, that the judgment to be reviewed is not a final judgment within the meaning of the statutes governing appellate jurisdiction.

There is certainly no lack of finality in the form of the judgment of the Supreme Court of Pennsylvania. That judgment reads:

> "The decrees of the Superior Court are affirmed and the appeals are dismissed at the cost of appellant." (R. 310.)

It is the established position of this court that on the question of finality the form of the judgment is controlling, and that the form cannot be disregarded in order to ascertain whether the judgment was final according to the state law. *Louisiana Navigation Co. vs. Oyster Commission*

of Louisiana, 226 U. S., 99. There is therefore no room for the suggestion that the judgment of the Supreme Court of Pennsylvania is not a final one within the meaning of Section 237 of the Judicial Code, under which this writ of error was granted.

There is, however, certain language in the last paragraph of the opinion of the learned court below (R. 210, fol. 114) relating to the finality of the order of the commission. This language is as follows:

> "In order to avoid misapprehension, however, we should add that we do not decide the order complained of is so far final as to be the *proper* basis for an appeal. If we had quashed the appeal for this reason, as it was argued we should do, the only effect would have been to postpone until after final decree, the consideration of the questions herein decided. Hence, since we agree with appellee on the merits, and are admonished by the fundamental law that litigants are entitled to 'justice without * * * delay,' we have deemed it best to shorten, as far as may be, future proceedings in this long drawn out litigation." (Italics ours.)

Whatever doubts the learned court may have had on the point were evidently resolved in favor of its jurisdiction, since it entertained the appeal

and unqualifiedly affirmed the decree of the Superior Court. The utmost that can be said about the language of the opinion is that it is a warning to the profession that in some *other* case, the court might decide the question in another way, but that for the purposes of the present case the order appealed from was deemed final so as to give the court jurisdiction. There was no remand for further proceedings, doubtless because none was deemed necessary. In a similar connection it was declared by Mr. Justice Field (*Wheeling & Belmont Bridge Co. vs. Wheeling Bridge Co.*, 138 U. S., 287, 290) that if the Supreme Court of a state holds a judgment of an inferior court of that state to be final, this court can hardly consider it in any other light in exercising its appellate jurisdiction.

Behind this decree of the Supreme Court of Pennsylvania, final in form and substance, lies the decree of the Superior Court, which was therein unqualifiedly affirmed, itself a decree final in form and substance, reading as follows (R. 282):

> "To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Since the opinion of the Superior Court makes no mention of the question of the finality of the order of the commission appealed from, the Superior Court necessarily felt that the order was a final one, since it assumed jurisdiction of the appeal, and by Pennsylvania law only final orders of the commission are appealable. The Supreme Court of Pennsylvania has decided that such orders as this are final and appealable: *Citizens Pass. Ry. vs. Public Service Commission,* 271 Pa., 39. The judgment of the Superior Court therefore stands conclusive upon the point that the order was final, since it was affirmed by the Supreme Court of Pennsylvania, and it is therefore in no way discredited or altered by the remark of the Supreme Court.

If one were to go behind the decree of the Superior Court and examine the order of the commission, it would appear at once that the order is final within the meaning of the Judicial Code. The order reads (R. 274):

> "This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a re-

port containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof;

Now, to wit, October 3, 1921, It Is Ordered: That The Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown, as set forth in a prior order of The Public Service Commission, dated September 13, 1920.

Permission is hereby granted The Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas service thus supplied and furnished."

There is nothing in the order itself (the form of which governs on the question of finality, as shown above), to show that it is not final. The permission granted the Peoples Company in the last paragraph of the order does not affect the finality of the order, under the decisions of this court.

In *Forgay vs. Conrad*, 6 How. (U. S.), 200, 203, a decree that sundry deeds were void for fraud, that lands and slaves therein mentioned be delivered up, and that the plaintiff have execution thereof, and directing that a master take

an account of the lands and slaves involved, the bill being retained for further decree so far as relating thereto, was held to be final upon an appeal by those defendants as to whose lands and slaves the accounting was directed. Mr. Chief Justice Taney said at p. 203:

> "The question upon the motion to dismiss is whether this is a final decree, within the meaning of the acts of Congress. Undoubtedly, it is not final, in the strict, technical sense of that term. But this court has not heretofore understood the words 'final decrees' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the legislature."

In *Railroad Co. vs. Southern Express Co.*, 108 U. S., 24 (1883), a decree restraining the defendant from interfering with the plaintiff's use of the defendant's facilities, "reserving to either party a right, at any time hereafter, to apply to this court, according to the rules in equity proceedings, for a modification of this decree as to the measure of compensation herein prescribed" was held to be final for purposes of appeal. This case plainly indicates that the "permission" granted by the commission in the last paragraph of its order cannot operate to render the order interlocutory.

In *Winthrop Iron Co. vs. Meeker,* 109 U. S., 180 (1883), a decree granting all the prayers of a bill to set aside certain transactions, reserving to the court such further directions respecting costs, etc., as might be necessary to carry the decree into execution, was held to be final as to all the relief prayed for in the bill.

Let us see whether the relation of the order of the commission to the whole proceedings is such as to bring it within the requirements stated in *Georgia Railway Co. vs. Decatur,* 262 U. S., 432 (1922). In that case Mr. Justice Sutherland stated the rule to be as follows (p. 437):

> "The judgment or decree 'must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it had already rendered.'"

Who are the parties to the controversy, and what is the controversy? A petition was filed on behalf of the Mayor of Johnstown (R. 199), joined in by the Johnstown Fuel Supply Company (R. 211, 216), defendants in error, praying that the plaintiff in error and the Johnstown Fuel Supply Company be restrained from discontinuing the supply of natural gas in the city of Johnstown (R. 204). The order of the commission grants

all the prayers of the petition so far as they are applicable to the Peoples Company, the only party not acquiescing in the demands of the petition. What could be more plain than that the controversy was closed with that order? There is nothing further for the Supreme Court, or for the Superior Court, or for The Public Service Commission to do if the judgment should be affirmed, than to carry the decree into execution. As a matter of fact, the Peoples Company has obeyed the order of the commission, and has filed a new schedule of rates against which complaint has been made before the commission at a different docket number (see R. 337, fol. 168), that they are unjust and unreasonable, an entirely separate controversy, the litigation over which is now dragging its weary length along before the commission.

That a complaint has been filed alleging that it has not obeyed that order properly is a matter relating to enforcement, and is no hindrance to an appeal. ***Railroad Co. vs. Express Co., supra.*** No other complaints had been filed against it at the time of the order complained of; why then was it not free to appeal? An intervenor has always been held by this court to have the right to appeal as soon as that part of the controversy in which he was concerned was finally decided.

In *Central Trust Co. vs. Grant Locomotive Works,* 135 U. S. 207, it was held that a decree in a suit to foreclose a railroad mortgage, that the claim of an intervening creditor to certain locomotives in the possession of the receiver and in the use of the road, was just and entitled to priority, was a final decree, which could not be vacated by the court of its own motion after the term.

Even if the Peoples Company were not an intervenor, but an original party, it would be entitled to appeal from the order complained of, since it arose out of a purely collateral matter unconnected with the main controversy except by the caprice of a clerk who docketed the complaint at the same number and term as the original proceeding. The order is a final determination of that collateral matter, and is therefore appealable under the decision of *Williams vs. Morgan,* 111 U. S., 684. In that case, it was held that a decree in a suit for the foreclosure of a railroad mortgage, fixing the compensation to be paid to the trustees under the mortgage from the fund realized from the sale, was a final decree as to that matter, and that this court had jurisdiction on appeal. The appeal had been taken by intervening bondholders. The case cites numerous analogous decisions.

It was asserted below that this is not a separate controversy and that the Peoples Company can take no appeal until the original (1916) complaint against the local rates charged by the Johnstown Company is disposed of. The answer is that that complaint is not likely ever to be disposed of; the parties have lost interest in it, and the questions raised by it have become obsolete. Is the Peoples Company to be forever barred of its appeal by the refusal of parties whose interests are antagonistic to it, to bring to a close a controversy in which it has no concern and which it has no power to terminate?

The substance of the situation is this: All complaints against the Peoples Company directly have been disposed of before the commission. This appeal is taken to the last of the orders. No complaints against the Peoples Company are pending before the commission, except such as relate to the enforcement of previous orders. The order complained of made a final disposition of the matters involved in the particular complaint. The pendency of other proceedings between other parties upon questions now moot, have no bearing upon the finality of the order complained of. The order has been affirmed by the Superior Court, which thereby held it to be final; the decree of the Su-

perior Court has been affirmed by the Supreme Court of Pennsylvania; and there is nothing in the form of the proceedings or in the substance either, to justify an argument that the judgment here to be reviewed is not final.

Conclusion.

The case now before the court is ruled by *Missouri vs. Kansas Gas Company*, 265 U. S., 298.

Respectfully submitted,

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Office Supreme Court, U. S.
FILED
OCT 17 1925
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

No. 70 October Term, 1925

THE PEOPLES NATURAL GAS COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, JOHNSTOWN FUEL SUPPLY COMPANY, and JOSEPH CAUFFIELD, Mayor of the City of Johnstown,

Defendants in Error.

No. 71 October Term, 1925

THE PEOPLES NATURAL GAS COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, AND JOHNSTOWN FUEL SUPPLY COMPANY,

Defendants in Error.

In Error to the Supreme Court of the State of Pennsylvania

BRIEF OF THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA,

Defendant in Error.

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BRIEF FOR THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Defendant in Error.

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COUNTER-STATEMENT OF THE CASE.

The Peoples Natural Gas Company, plaintiff in error, is a public service corporation, incorporated June 26, 1885, under the Pennsylvania Act of May 29, 1885, P. L. 29, providing for the incorporation and regulation of natural gas companies "for the purpose of producing, dealing in, transporting, storing and supplying natural gas to such persons, corporations, or associations within convenient connecting distance of its line of pipe as may desire to use the same." The territory of the Peoples Natural Gas Company as specified in its Articles of Association, and in later certificates of extension filed by it, includes the City of Johnstown, Pennsylvania. Section 10 of the statute provides that "the transportation and supply of natural gas for public consumption is hereby declared to be a public use," and gives to the corporations organized thereunder the right of eminent domain. This right has been exercised by the plaintiff in error for the construction of its line to Johnstown. (Record, p. 254; fol. 1057a-1058a). The bond of the plaintiff in said proceedings was approved by the Court of Common Pleas of Cambria County on April 23, 1907, (Record, p. 249; fol. 1046a). These proceedings terminated in a settlement between the parties and the execution of a right-of-way agreement by the land owner for a consideration of One thousand dollars, under date of November 13, 1908. (Exhibit No. 2, Record, p. 255; fol. 1065a).

At the time of its inception, plaintiff company obtained all of its gas from wells situated in the State of Pennsylvania, but by reason of the depletion of the supply of gas in this State, and enlargement of appellant's territory of supply, it became necessary for it

to purchase gas in increasing quantities from territories outside the State.

Plaintiff did not invade the West Virginia territory itself by drilling wells and then transporting the West Virginia gas into Pennsylvania, but without going beyond the borders of this Commonwealth with its operations, it entered into a contract with the Hope Gas Company, a West Virginia corporation, which has no lines in Pennsylvania, and which is an entirely separate and independent company, but the ownership of whose stock is vested in the same interests that own the stock of appellant. Under the terms of this contract, natural gas is delivered by the West Virginia corporation to the Pennsylvania corporation at the West Virginia-Pennsylvania state line.

The Peoples Company has gas wells in Greene, Washington, Allegheny, Armstrong, Indiana and Clarion Counties in Pennsylvania. It produces practically one-third of its supply from its own wells. Immediately upon the receipt of the gas from West Virginia at the State line, it commingles it in its pipe lines with the gas produced by it from its wells in Pennsylvania, and purchased by it in Pennsylvania, and stores and distributes this mixed product in and through its pipe lines to the different points in Pennsylvania where the gas is burned.

In this manner the gas purchased from the West Virginia corporation is used as an additional supply to augment the gas mined and purchased in Pennsylvania, with the result that approximately 75 per cent of the gas delivered at Johnstown is produced in West Virginia, and 25 per cent produced in Pennsylvania.

The gas produced in West Virginia is received into the pipe lines of plaintiff at Brabe on the state line, and immediately mixes with the gas produced in Pennsylvania in the pipe lines of appellant, and is supplied by

appellant to its customers at the burner tips, under special municipal franchises, in about 75 cities and boroughs in Pennsylvania, among which are Jeannette, Greensburg and Latrobe, west of Johnstown, and Cresson, Altoona and Juniata, east of Johnstown.

Pumping stations are maintained by plaintiff at the state line and at Derry, Pennsylvania.

Various pipe lines of plaintiff converge at Derry and from that point a 12-inch line was built eastwardly about 1906 to the city line of Johnstown.

Some years later, about 1912 or 1913, plaintiff extended its service to Altoona by building a 14-inch line, branching from the said 12-inch line at a point which is located a short distance west of Johnstown, and thence eastwardly to Altoona (Record, p. 32, 36, 43; fol. 78a; p. 85a; p. 98a).

Plaintiff is not a common carrier; it does not hold itself out as a transporter of gas for others; it owns all the gas in its lines; the only transporting it does is incidental to the distribution of its own commodity in Pennsylvania to its own customers.

It has filed, posted and published rates, and submitted itself to the jurisdiction of the Public Service Commission of Pennsylvania for every service it renders, except the service rendered by it at Johnstown.

The gas supplied by plaintiff for use in the city of Johnstown by domestic and industrial consumers was furnished under the provisions of a contract between The Johnstown Fuel Supply Company and plaintiff, dated August 12, 1909, and received in evidence as Exhibit "J-3" (Record, p. 240; fol. 1021a).

The plaintiff does not make a business of wholesaling its gas to distributing companies. It supplies gas to no other gas company in the same way that it furnishes its product to the said Johnstown Fuel Supply Company (Record, p. 34; fol. 81a).

It sells some gas to the United Natural Gas Company in Clarion County from the field and makes occasional sales to the Philadelphia Company in emergencies but plaintiff's method of supplying gas at the City of Johnstown is different from that adopted by it in any other instance.

The contract of August 12, 1909, states that it is intended to supersede a former contract between The Peoples Natural Gas Company and the Johnstown Fuel Supply Company under date of December 31, 1906.

The Johnstown Fuel Supply Company was incorporated May 3, 1907, under the said Act of May 29, 1885, P. L. 29, "for the purpose of producing, dealing in, transporting, storing and supplying natural gas" in "the city of Johnstown, in the county of Cambria, state of Pennsylvania, and its suburbs," etc.

On September 13, 1916, Louis Franke, as Mayor of the City of Johnstown, and as a domestic consumer of natural gas, filed a complaint against an increase in the domestic rates filed by the Johnstown Fuel Supply Company. The said Johnstown Fuel Supply Company, in its answer to the complaint of the said Louis Franke (Record, p. 174; fol. 763a), averred inter alia, that the proposed increase in its rates was justified by the fact that it was not earning more than 3% per annum on the fair value of its investment; and stated that its supply of natural gas was purchased by it from the Peoples Natural Gas Company under the

above-mentioned contract dated August 12, 1909, "which contract, inter alia, provided for a payment to the said Peoples Natural Gas Company of 70% of its gross actual receipts from the sale of all natural gas for domestic consumption and 75% of its gross receipts for the sale of natural gas under special contracts approved by the said Peoples Natural Gas Company."

It thus appearing that the terms of said contract materially affected the operating expenses of the Johnstown Fuel Supply Company, the Commission directed the Peoples Natural Gas Company to intervene, as a party respondent, in the pending complaint of the said Louis Franke filed in behalf of the City of Johnstown.

Thereupon the Peoples Natural Gas Company filed, on October 3, 1916, and September 20, 1917, respectively, its original and amended demurrer and answer to said complaint (Record, pp. 175, 177; fol. 766a, 771a).

In and by these answers and demurrers the Peoples Natural Gas Company set up, inter alia, that it was not engaged in the business of supplying gas to the public at Johnstown; that the gas contracted to be supplied by it to the Johnstown Fuel Supply Company is largely produced in the State of West Virginia and the transportation, sale and delivery of the gas so contracted for constitute interstate and not intrastate commerce; that the contract between said companies is a contract relating to interstate commerce and the Commission is, therefore, without jurisdiction to make any orders with reference thereto, as the making of any such orders would constitute an interference with, and undue burden upon, interstate commerce.

It further averred that the natural gas furnished to the Johnstown Fuel Supply Company is purchased

to a large extent by the Peoples Natural Gas Company from a West Virginia corporation (the Hope Natural Gas Company above mentioned), under the terms of a contract; that the said West Virginia corporation is beyond the jurisdiction of the Commission, and the Commission has no power to make any order affecting or regulating the price at which the West Virginia corporation shall sell its gas; that the gas so produced by the West Virginia corporation passes through its pipes in West Virginia and through the pipes of plaintiff in Pennsylvania in a continuous flow and is delivered by plaintiff to the Johnstown Fuel Supply Company, by which company it is distributed through its system of distribution pipes to its customers.

In view of the position taken by the Peoples Natural Gas Company, the complainant filed on September 24, 1917, a supplemental complaint against the Johnstown Fuel Supply Company and the Peoples Natural Gas Company. To this supplemental complaint the Peoples Natural Gas Company filed a demurrer and answer on October 4, 1917. Testimony was taken before the Commission on various dates between September 14, 1917, and November 22, 1917. On December 17, 1917, the Commission made an order directing the Peoples Natural Gas Company to file, post and publish a tariff and schedule of rates. (Record, p. 187; fol. 791a). The Peoples Natural Gas Company appealed from this order to the Superior Court of Pennsylvania, and that court, on October 30, 1918, affirmed the Commission's order. (*Franke* vs. *Johnstown Fuel Supply Company*, 70 Pa. Superior Ct. 446). From this decision the Peoples Company appealed to the Supreme Court of Pennsylvania and on June 26, 1920, that court, of its own motion, dismissed the appeal as premature. (*Peoples Natural Gas Company* vs. *Public Service*

Commission, 268 Pa. 235). In the meantime, on July 25, 1919, the Peoples Natural Gas Company had notified the Johnstown Fuel Supply Company that the supply of gas would be discontinued and the contract terminated in accordance with its terms on October 1, 1920. On July 24, 1920, in obedience to the order of the Commission, the Peoples Natural Gas Company filed a tariff setting forth the rates and terms of the contract between it and the Johnstown Fuel Supply Company, and attached as part thereof a copy of the notice. (Record, p. 203; fol. 832a and 834a).

On September 1, 1920, the complainant filed a further complaint asking the Commission to restrain the Peoples Natural Gas Company and the Johnstown Fuel Supply Company from discontinuing the supply of natural gas in the City of Johnstown. On September 8, 1920, a preliminary hearing was held and on September 13, 1920, an interlocutory or temporary order was made by the Commission requiring the Johnstown Company and the Peoples Company to continue to supply natural gas in the City of Johnstown until further order of the Commission.

On January 27, 1921, the Peoples Natural Gas Company filed in the office of the Secretary of the Commonwealth of Pennsylvania, and on January 29, 1921, recorded in the office of the Recorder of Deeds of Cambria County, a certificate by which it attempted to alter its territory of supply of natural gas for consumption by excluding therefrom the City of Johnstown, the 9821 feet of pipe line between Johnstown and the main line leading to Altoona, and also the cities, boroughs and town settlements in the vicinity of Johnstown and along said pipe line. (Record, p. 262; fol. 1134a). It was for the construction of this same section of line that the Peoples Company exercised its right of eminent domain in 1907. (See map, Record, fol. 1069a).

On October 3, 1921, the Commission filed its report and order requiring the Peoples Natural Gas Company to continue to furnish a supply of natural gas to the Johnstown Fuel Supply Company. From this order the Peoples Natural Gas Company appealed to the Superior Court of Pennsylvania. On October 9, 1922, that court affirmed the order of the Commission *(Peoples Natural Gas Co.* v. *Commission* 79 Pa. Superior Court 560). From this decision the Peoples Natural Gas Company appealed to the Supreme Court of Pennsylvania and that court, on February 4, 1924, affirmed the decree of the Superior Court. *(Peoples Natural Gas Co.* v. *Commission,* 279 Pa. 252). From that decision the present writ of error has been sued out.

ARGUMENT

I.

The Plaintiff in Error Is Obligated by its Charter, to Render the Service Ordered.

The Peoples Natural Gas Company, plaintiff in error, is a Pennsylvania corporation engaged solely in the business of producing, dealing in and supplying natural gas in Pennsylvania by authority of that Commonwealth. In the decision from which the present appeal is taken the Supreme Court of Pennsylvania held that under the law of Pennsylvania the plaintiff in error has the right and is under the duty to continue to sell gas to the Johnstown Fuel Supply Company and that it cannot abandon the right or evade the duty without either having first secured permission from the Public Service Commission or having surrendered its charter with the permission of the court of common pleas in the manner provided by law. It is a proper inference from the decision of the court that the charges made for such service must be just and reasonable and may be fixed by the Public Service Commission of the state. The plaintiff claims that the state laws imposing this duty cannot be enforced if part of the gas which it now sells to the Johnstown Fuel Supply Company is delivered to it at the state line by a company which produces it from wells in the state of West Virginia.

The Peoples Natural Gas Company is not a pipe line or transportation company. It carries in its pipes no gas except that which it owns. It receives none of this gas outside the boundaries of the Commonwealth of Pennsylvania and delivers none of it outside of those boundaries. Part of its supply is received at the

state line from a West Virginia corporation and part of it is produced from wells within the Commonwealth of Pennsylvania. The local and the foreign gas is mixed and then delivered in pipes of the plaintiff company directly to consumers in 75 municipalities in Pennsylvania. There is no denial of the right of the state Commission to regulate the rates charged to such consumers. Practically the only sale of gas which is not for direct use by the purchaser is the sale to the Johnstown Fuel Supply Company. This company supplies consumers in and near the City of Johnstown, Pennsylvania, and purchases all of its supply from the Peoples Natural Gas Company. The right of the state Commission to regulate this sale is the point in issue.

II.

The Sale and Delivery of Gas to the Johnstown Fuel Supply Company is not Interstate Commerce

The plaintiff in error cites numerous cases to prove that the transportation of natural gas from one state to another is interstate commerce. Of course this is not disputed. However, no case is cited which holds that a natural gas company is engaged in interstate commerce because it receives at one point in a state and carries to another point within the same state, gas which never afterward crosses a state line. In *Pennsylvania and Ohio* v. *West Virginia*, 262 U. S. 553, it was held that the transportation of gas from the wells in West Virginia to points in Pennsylvania and Ohio or to points on the state lines is interstate commerce. In *Pennsylvania Gas Company* v. *Public Service Commission*, 252 U. S. 23, the transportation of natural gas by a Pennsylvania corporation from wells in Pennsylvania to the homes of consumers in New York was held to be interstate commerce, although of

such a local nature that the charges to consumers could be fixed by the Public Service Commission of New York. In *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298, this court held that the transportation of natural gas by a Delaware corporation from wells in Oklahoma to points in Kansas and Missouri was interstate commerce. This last named case is chiefly relied on by the plaintiff in error which refers to it as "a case indistinguishable upon its facts from the present case." A study of the two cases will not sustain the accuracy of that statement.

The Kansas Natural Gas Company was not operating under a charter issued by any of the states in which it operated; it transported gas from one state to another state; it sold no gas to consumers but sold only to distributing companies for resale to consumers in numerous cities and communities in different states; it operated under no state or municipal franchises.

The Peoples Natural Gas Company is a corporation operating under a Pennsylvania charter which imposes the duty to render adequate service at reasonable rates in exchange for certain rights including the right of eminent domain, which right the company has exercised for the purpose of rendering the service which it now seeks to discontinue. It transports no gas across a state boundary. It directly supplies consumers in 75 municipalities in the State of Pennsylvania and sells gas to only one distributing company. From the pipe line which passes near Johnstown it supplies consumers in towns both to the west and to the east.

The facts which distinguish the former case from the present appeal were controlling in that decision. That the fact that the Kansas Natural Gas Company was a foreign corporation had a material bearing on the decision cited is shown by its concluding words:

"That some or all of the distributing companies are operating under state or municipal franchises cannot affect the question. It is enough to say that the Supply Company is not so operating and is not made a party to these franchises by merely doing business with the franchise holders." The Peoples Natural Gas Company occupies the same position as the distributing companies in Kansas and Missouri. In its opinion the court said: "With the delivery of the gas to the distributing companies, however, the interstate movement ends." It has previously held in *Public Utility Commission* v. *Landon*, 249 U. S. 236, that the rates to be charged by the distributing companies could be regulated by the state commissions. The Peoples Natural Gas Company is a distributing company, receiving a part of its supply from the Hope Natural Gas Company, an interstate carrier. The fact that it distributes to consumers in 75 municipalities does not change its character. There is nothing in the opinion in *Missouri* v. *Kansas Gas Co.* to indicate that each of the distributing companies supplied only one municipality, or if that were true, that the fact had any bearing on the decision.

That there was interstate transportation of natural gas from the wells in West Virginia is not disputed. However, this interstate commerce ended with delivery to the Peoples Company at the state line. This court has often said that the interstate transportation is completed upon delivery to the consignee (*Rhodes* v. *Iowa*, 170 U. S. 412; *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543). The plaintiff in error in its Brief (p. 60) cites from *Gulf, Colorado and Santa Fe Ry. Co.* v. *Texas*, 204 U. S. 403, 412, the statement: "It is undoubtedly true that the character of a shipment, whether local or interstate, is not changed by a transfer of title during the transportation." It is undoubtedly true that *transfer for title* does not

change the character of the transportation, but the case cited definitely decides that *delivery* of an interstate shipment to the consignee does terminate the interstate character of the shipment and that the intention of the consignee to forward the commodity to a different place in the same state does not invest such further shipment with an interstate character.

By its decision in this case, the court recognized the distinction which exists between intra-state transportation of goods before and after they have crossed a state boundary. It has frequently been held that, under certain circumstances, transportation from one point in a state to another point in the same state and delivery to a consignee may be interstate commerce if the intended destination is in another state and the goods transported will arrive in such different state in the ordinary course of business. However, where the shipment has been delivered to the consignee in the state of final destination, transportation by such consignee to another part of the same state is not interstate commerce. This distinction is based upon the essential nature of interstate commerce, upon a knowledge of the conditions upon which business is transacted, and upon sound public policy. It was recognized by this court in *Gulf, Colorado and Santa Fe Ry. Co.* v. *Texas*, supra, and in *Chicago, Milwaukee and St. Paul Ry. Co.* v. *Iowa*, 233 U. S. 334.

The facts in the last cited case are as follows: A coal company shipped coal over the lines of several carriers from Illinois to Davenport, Iowa, where it maintained a branch office. Upon arrival in Davenport, the cars were placed on an interchange track and all charges from the point of origin were paid by the shipper. Thereupon the shipper desired to ship said coal to points on the line of the Chicago, Milwaukee and St. Paul Railway Co. That company refused to take the

cars from the interchange track or to transport the coal unless it were unloaded from the cars in which it arrived and reloaded in cars of the said railway company. Upon complaint, the Railroad Commission of Iowa ordered the said railway company to accept said cars and to transport them over its lines to points within the state.

The railway company contended that the shipments in question were interstate, and alleged that the method of transportation resorted to was a device of shippers to secure, by adding the rate from the initial point in Illinois to Davenport to the rates established by the Iowa distance tariff from Davenport to other points in the state, a lower rate than was applicable to an interstate shipment from the point in Illinois to the point of final destination.

The Railroad Commission found, and the court agreed, that "under the admitted facts, the city of Davenport became a distributing point for coal shipped by the consignor. The certainty in regard to shipments of coal ended at Davenport. The point where the same was to be shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee, and he could sell it in transit or at Davenport, or reconsign it to a point on respondent's railway, or any other railway, at his own discretion."

The Railroad Commission held that the shipments were intra-state, and this court said: "The record discloses no ground for assailing this finding."

One case cited by the plaintiff in error seems at first glance to be inconsistent with the two cases above cited. In *Baltimore & Ohio S. W. R. R. Co.* v. Settle, 260, U. S. 166, the facts were as follows: The railroad had freight stations at Oakley and at Madisonville, both in Cincinnati. Certain lumber dealers, located in

Madisonville, had lumber shipped from the South to Oakley, paid the freight to that point, received at that station delivery of the loaded cars on the team tracks or in the bulk yard, and without unloading the cars, reshipped them within a few days to Madisonville on local bills of lading, paying the local freight rate. The rate to Oakley plus the rate from Oakley to Madisonville was less than the rate from the points of origin to Madisonville. The shippers had no place of business at Oakley. It was conceivable that they might find a customer who would take the lumber at Oakley, but that was not probable or intended, nor was it the reason for shipping to Oakley. The movement had been divided into two stages because they believed that by so doing they could secure transportation to Madisonville at less than the through interstate rate. They had the intention from the beginning of reshipping the lumber to Madisonville.

The railroad company insisted that the through rate to Madisonville applied, instead of the combination of through and local rates. This court sustained that contention, and said, "To permit carriers' revenues from interstate rates to be depleted by such misuse of a combination of intermediate rates would be no less inconsistent with the provisions and purposes of the Act to Regulate Commerce than to permit them to be used as a means of discrimination."

This decision is not inconsistent with the two cases cited above. In fact, the court said that "the decision in *Gulf, Colorado and Santa Fe Ry. Co.* v. *Texas*, * * * is entirely consistent with these later decisions of this court, although some expressions in the opinion are not."

The transportation involved in the case at bar resembles the shipments from Davenport rather than the shipments from Oakley, which were considered in

the above cases. The elements of difference remove the present case still further from the realm of interstate commerce. The gas is not transported into the state by a common carrier, but is delivered at the state line by the seller from its own pipes. After delivery, the gas does not remain on interchange tracks in cars of the interstate carrier, but is delivered into the pipes of the consignee where it is immediately mixed with local gas of the consignee before any further transportation takes place. It is not forwarded after delivery over the lines of another common carrier in the cars in which it was brought into the state, but is carried from the place of delivery by the consignee in its own pipes. No question of interstate rates, or misuse of a combination of intermediate rates, exists. If the shipments from Davenport in the case cited were not interstate commerce, *a fortiori* the transportation of gas by the present plaintiff in error in its own pipes from the point of delivery and its sale within the state is not interstate commerce.

We respectfully submit that, under all the decisions, a domestic gas company which neither produces nor buys any part of its product, and has no lines, outside of Pennsylvania, but produces a part of its product within that state, and buys the remainder at the state line, and sells and delivers the mingled commodity to its consumers to be used by them at their burner tips, is not engaged in interstate commerce, and is fully subject to the jurisdiction of the Commission, and the fact that, out of the same pipe which serves consumers, gas is sold to one distributing company, does not change the character of the transportation.

III.

The Plaintiff in Error Was not Ordered to Supply Gas Received from West Virginia.

The order of the Commission in this case reads as follows:

> "Now, to-wit, October 3, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.
>
> "Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished."

It will be noted that the plaintiff company was ordered merely to fulfill its statutory duty. It has secured from the State of Pennsylvania a charter giving to it the right to produce natural gas from wells, to lay pipes, and to exercise the right of eminent domain for the purpose of supplying the public, including, as the Pennsylvania Supreme Court has held, the Johnstown Fuel Supply Company. The acceptance of these rights imposes upon it the duty to render adequate service, and the Public Service Commission of Pennsylvania is the body empowered by the State to determine what service is adequate. The plaintiff in error may not discontinue its supply to any portion of the public within its charter territory without the permission of that Commission. It is under no obliga-

tion to purchase gas from a corporation in another state. It is not necessary for it to do so in order to carry out the order of the Commission upon which the present appeal is based.

The Peoples Natural Gas Company, during the year 1920, sold 28,970,473,000 cu. ft. of gas, of which it produced from its own wells 11,160,363,000 cu. ft. The balance of the gas sold was purchased principally from the Hope Natural Gas Company, (Record, pp. 646a, 1149a).

The Peoples Company supplies natural gas directly to consumers in 75 municipalities in Pennsylvania, including the City of Pittsburgh. Should its supply be inadequate to furnish service to all of its present patrons it may, with the approval of the Commission, discontinue service to a part thereof. Applications for such permission have frequently been made to the Public Service Commission by gas companies whose supply has become depleted, and the permission has been granted in some cases. The Public Service Commission is the body appointed to determine to whom service should be rendered when it cannot be rendered to all. The Commission has permitted natural gas companies to discontinue service to industrial consumers when its supply was insufficient to render adequate service for domestic and commercial uses, and this permission of the Commission has been held to be reasonable by the State courts. (*Pennsylvania Gas Co.* vs. *Commission*, 83 Pa. Super. Ct. 557). In some cases discontinuance of service to an entire community has been permitted.

There is nothing in the record to show that it would be impossible or unreasonable for the company to supply Johnstown exclusively with gas produced in Pennsylvania. Should that be true, the company may seek an order from the Commission permitting it to discontinue such service.

If the attitude of the plaintiff company is correct, any State corporation, producing and supplying gas solely in one state, may free itself from all regulation of its rates and service merely by purchasing gas from an interstate carrier and mixing it with the gas produced from its own wells. We submit that this position finds no authority in any decision of your Honorable Court, or of any other court; nor is it supported by logic or reason.

IV.

If the Transportation of Gas Within the State is Interstate Commerce, it is of Such a Nature as Permits Regulation by the State.

It is the position of the Public Service Commission that the interstate transportation of the gas produced in West Virginia ended with delivery to the Peoples Natural Gas Company, a distributing company. Should this ground be unsound and the transportation not end until the gas reaches the burner tips of the plaintiff company, or the pipes of the Johnstown Fuel Supply Company, we assert that the transportation is local in character and may be regulated by the State of Pennsylvania.

The Interstate Commerce Act as amended by the Act of June 29, 1906, c. 3591 Sec. 1 (34 Statutes at Large 584) reads as follows:

> "That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodities *except water and except natural or artificial gas* by means of pipe lines or partly by pipe lines

> and partly by railroad and partly by pipe lines and partly by water." (Italics ours)

It is claimed by plaintiff in error that the absence of federal regulation of the transportation of natural gas is not a delegation of authority to the states but is a declaration that such commerce shall be free from any regulation whatever. This court has repeatedly held that such an assumption is not justified. The Interstate Commerce Act, sec. 1 paragraph 22, as amended by the Transportation Act of 1920, 41 Statutes at Large 456, c. 91 sec. 402, reads as follows:

> "The authority of the commission conferred by paragraphs (18) to (21) both inclusive shall not extend to the construction or abandonment of spur, industrial, team, switching or sidetracks located or to be located wholly within one state or of street, suburban or interurban electric railways which are not operated as a part or parts of a general steam railroad system of transportation."

Western & Atlantic Railroad v. *Georgia Public Service Commission*, 267 U. S. 493, involved the abandonment of a sidetrack by an interstate carrier. The court said:

> "It seems to be the contention of the company that since 85 per cent of the business done on the sidetrack is interstate commerce, the power to order its establishment or abandonment is vested in the Interstate Commerce Commission *and that the state commission is without authority in the premises*. Such a claim is in the teeth of the Transportation Act of 1920. * * * See *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331, 345."

The court in these two cases took the position that the exclusion of the subject from the jurisdiction of the Interstate Commerce Commission implied that it was within the jurisdiction of the state commissions to such an extent as would not unreasonably burden interstate commerce.

That the same interpretation applies to the transportation of natural gas was decided by this court in *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23. In that case a Pennsylvania corporation transported gas from its wells in the State of Pennsylvania to certain towns in the state of New York, where it sold the gas directly to consumers. The Public Service Commission of New York fixed the rates for sale to the local consumers and an appeal was taken to this court by the Gas Company. In the decision of this court, such transportation was held to be interstate commerce from its origin to the burner tips. The court said:

> "In dealing with interstate commerce it is not in some instances regarded as an infringement upon the authority delegated to Congress, to permit States to pass laws indirectly affecting such commerce, when needed to protect or regulate matters of local interest. Such laws are operative until Congress acts under its superior authority by regulating the subject-matter for itself. * * * The rates of the gas companies transmitting gas in interstate commerce are not only not regulated by Congress but the Interstate Commerce Act expressly withholds the subject from federal control. The thing which the state commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, * * * This local service is not of that character which requires general and uniform regulation

of rates by congressional action * * * While the manner in which the business is conducted is part of interstate commerce, its regulation in the distribution of gas to the local consumers *is required in the public interest* and has not been attempted under the superior authority of Congress.

"It may be conceded that the local rates may affect the interstate business of the company. But this fact does not prevent the State from making local regulations of a reasonable character. Such regulations are always subject to the exercise of authority by Congress enabling it to exert its superior power under the commerce clause of the Constitution."

The sale of gas by the Peoples Natural Gas Company to the Johnstown Fuel Supply Company is not of that character which requires general and uniform regulation of rates by congressional action. Its regulation "is required in the public interest and has not been attempted under the superior authority of Congress." The Supreme Court of Pennsylvania, in the decision from which the present appeal is taken, said:

"For many years appellant has been supplying gas to the Johnstown Company, on what it is pleased to term a wholesale basis, without regard to where the commodity came from. It did this knowing there was no other visible or probable source of supply, and knowing also that the citizens of Johnstown (as in fact was the case) would rearrange their mode of life, and would go to considerable expense in adjusting their homes to the new system. Solely for the purpose of making the connection with the Johnstown Company's pipes, appellant exercised the right of eminent

domain given to it by the state, declaring it did so in order that those citizens might receive the gas it had to supply." *Peoples Natural Gas Co.* v. *Public Service Commission,* 279 Pa. 252, 270.

If the service to the consumer in Pittsburgh and the other municipalities served by the plaintiff is local in character and subject to regulation by the state (and this has been decided in *Pennsylvania Gas Co.* v. *Public Service Commission,* supra), service to the City of Johnstown is equally local and regulation of charges for such service is equally necessary. If the law were otherwise the plaintiff could do what it has attempted to do in this case,—deprive the citizens of Johnstown of their only source of supply of natural gas solely because of a dispute with the distributing company concerning the price to be paid for the gas. The attempted abandonment of service would cause to the residents of Johnstown a considerable financial loss. Surely the necessity for some regulation which was stated by this court in the Pennsylvania Gas Company case to be the criterion, exists in the present case.

The case of *Missouri* v. *Kansas Natural Gas Company,* 265 U. S. 298 supports this position. It was there held that the interstate transportation of gas, none of which was sold directly to consumers, but all of it sold under contract to distributing companies in several states, was of a national character.

"The paramount interest is not local but national, admitting of and requiring uniformity of regulation. Such uniformity even though it be the uniformity of governmental nonaction may be highly necessary *to preserve equality of opportunity and treatment among the various communities and states concerned.*"

No such uniformity is required in the present case. There are no various communities and states concerned which require equality of opportunity and

treatment. Only one state and only one community is served in this manner by the plaintiff company. In order that the communities served by the plaintiff company may have equality of opportunity and treatment it is necessary that the state regulate the service to the company supplying the city of Johnstown, since the state has the undoubted right to regulate the service of the plaintiff company to all other communities served by it.

Plaintiff in error cites several cases which hold that a state in which natural gas originates may not tax the transportation of such gas if it is destined for delivery to points outside the state. There is no doubt of the correctness of these decisions, but they have no application to the present case. A tax upon interstate commerce has always been held to be a burden upon such commerce, and the states are without power to place such burden. There is no attempt in this case to burden or interfere with the interstate transportation of gas.

Attleboro Steam & Electric Company vs. *Public Utilities Commission,* 129 Atlantic, 495, a decision of the Rhode Island Supreme Court, is cited in support of the statement that the charges for electricity transported across a state line cannot be regulated by the state commissions. The facts in that case are as follows: A Rhode Island corporation generated electricity in Rhode Island, which it delivered to a Massachusetts corporation at the state line. The price was fixed by contract. The Massachusetts corporation applied to the Public Utilities Commission of Rhode Island for the purpose of having that Commission fix rates at a figure lower than that fixed by the contract. The Supreme Court of Rhode Island held that the transportation of electricity from the generating plant was interstate commerce, and the charges for delivery to the Massachusetts corporation at the state line

could not be regulated by the Rhode Island Commission. It is difficult to see by what reasoning any different decision could have been reached by the court. However, the facts of that case clearly distinguish it from the present case. The analogy would be perfect if the West Virginia Commission attempted to fix the charge made by the Hope Natural Gas Company to the Peoples Natural Gas Company.

A case more nearly at point, but likewise clearly distinguishable, is *Mill Creek Coal & Coke Company* vs. *Public Service Commission,* 84 W. Va. 662, 100 Southeastern 557. In that case a Virginia corporation generated electricity in Virginia and sold it to the public in Virginia and in West Virginia. The Public Service Commission of West Virginia fixed the charges for service in West Virginia. On appeal the Supreme Court of West Virginia held that although the transportation of electricity from Virginia and its sale in West Virginia was interstate commerce, it was of such a local nature that the rates could be regulated by the state in which the service was rendered.

The principle stated in the Pennsylvania Gas Company case is that the States may regulate interstate commerce in natural gas where such regulation is required in the public interest, and the principle stated in Missouri vs. Kansas Natural Gas Company is that the local or national character of such commerce depends upon whether local regulation or absence of regulation will best "preserve equality of opportunity and treatment among the various communities and states concerned." Determined by these standards, the service of the plaintiff in error, even though it were interstate commerce, would be of such a character as might be regulated by the State in the absence of national action.

V.

The Order Appealed From Does not Burden Interstate Commerce.

The states have no right to impose any burden upon interstate commerce. Many cases are cited in the brief of the plaintiff in support of this statement.

West v. *Kansas Natural Gas Company*, 221 U. S. 229, decided that a state might not prohibit a foreign corporation from building pipe lines across highways and transporting gas therein to points outside the state.

Pennsylvania and Ohio v. *West Virginia*, 262 U. S. 553, decided that the State of West Virginia might not order a preference to be given to the citizens of West Virginia and thus interfere with the transportation of gas from West Virginia to other states. Various decisions concerning the right of states to tax goods carried in interstate commerce are cited.

None of these cases has any application to the case at bar. The order of the Commission in this case does not place any burden upon interstate commerce. It does not necessarily affect interstate transportation of gas in any way. The plaintiff can obey the order of the Commission by furnishing gas entirely from wells within the state of Pennsylvania. Even though it were necessary for it to secure gas from West Virginia in order to obey the order of the Commission, such order would not be a burden on interstate commerce. Its affect would be the exact opposite. It would be an encouragement of interstate commerce. A statement of this court in *Sonneborn Brothers* vs. *Cureton*, 262, U. S. 506, upon which the plaintiff places much stress, does not rule this case. The court there said that the action of the state authorities of Texas in exempting from state taxation, sales made before the oil to fulfill the sales was sent to Texas, was

proper. The plaintiff takes the position that since it had previously been serving the Johnstown Fuel Supply Company under a contract, and is now serving it under an order from the Public Service Commission, its purchase of the gas to fulfill its contract obligation, or to obey the order of the Public Service Commission, is interstate commerce and cannot be regulated. Even though the two cases were analogous, the only effect of the decision of the court would be that no burden could be placed upon such commerce, such as is imposed by taxation. The court did not imply that such commerce could not be encouraged by any State action.

In considering this branch of the case it is important to keep in mind the nature and effect of the order of the Commission in question, especially in view of the fact that Congress has expressly excepted water and natural and artificial gas companies out of the Interstate Commerce Act.

On January 27, 1921, The Peoples Natural Gas Company undertook, without asking the permission or approval of the Public Service Commission, to abandon that part of its trunk pipe line extending from a point on its main line between Derry and Altoona toward Johnstown a distance of about 9,821 ft. and being the line laid under its right of eminent domain as above stated, and to alter its territory of supply of natural gas for consumption by excluding therefrom the City of Johnstown and vicinity and the territory along said 9,821 feet of trunk line.

This attempt to abandon said line and curtail its territory of supply, so as to enable it to carry natural gas past the City of Johnstown and over the mountains to Altoona, where plaintiff sells gas directly to domestic consumers, was made by filing a certificate under Sec. 5 of the Act of May 29, 1885, P. L. 29, with the

Secretary of the Commonwealth and recording the same in Cambria County.

Under the provisions of the contract between plaintiff and Johnstown Fuel Supply Company consumers of gas in Johnstown were induced to change at considerable expense to themselves from the former artificial gas system in operation in that city to the natural gas distribution system, and it was the plain purpose of plaintiff to bring about the scrapping of the former artificial gas plant in Johnstown and the transfer of the consumers to the natural gas distribution system.

Having succeeded in putting the artificial plant and distribution system out of business, plaintiff now proposes to abandon service to Johnstown on account of its controversy with the local company, and carry its gas past that city and twenty-five or thirty miles over the mountains to Altoona and there serve it to consumers who can obtain service from the existing artificial gas plant in that city.

It is therefore apparent that if the diminution in the supply of natural gas suggested by plaintiff should actually occur to such an extent as to necessitate the cutting off of the supply of natural gas to any domestic consumers, it might be more reasonable to discontinue the natural gas service to Altoona than to the City of Johnstown. The merits of this controversy, however, are not now before your Honorable Court, and we merely mention these facts for the purpose of showing the injury which plaintiff purposes to inflict upon the citizens of Johnstown without even applying to the Commission for permission to abandon its service at that place.

VI.

CONCLUSION

The Public Service Commission of the Commonwealth of Pennsylvania, in the order which is the basis of the present appeal, made no requirement of the plaintiff in error except that it perform its charter obligations within the State of Pennsylvania, and that it should not avoid even unreasonable obligations except in the manner provided by law. This order did not necessarily affect interstate commerce, directly or indirectly. Even though the order should have an effect upon interstate commerce, it is such a regulation of commerce as is permitted to the states in the absence of Congressional action.

Respectfully submitted,

FRANK M. HUNTER,

Counsel for The Public Service Commission of the Commonwealth of Pennsylvania,

Defendant in Error.

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CLERK

IN THE

Supreme Court of the United States

NO. 70 OCTOBER TERM, 1925.

THE PEOPLES NATURAL GAS COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, JOHNSTOWN FUEL SUPPLY COMPANY, and JOSEPH CAUFFIELD, Mayor of the City of Johnstown, Defendants in Error.

NO. 71 OCTOBER TERM, 1925.

THE PEOPLES NATURAL GAS COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, JOHNSTOWN FUEL SUPPLY COMPANY, Defendants in Error.

In Error to the Supreme Court of the State of Pennsylvania.

BRIEF OF JOHNSTOWN FUEL SUPPLY COMPANY. Intervening Defendant in Error.

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THE FACTS—A COUNTERSTATEMENT:

Peoples Natural Gas Company (hereinafter called the Peoples Company), a corporation duly organized under the laws of the State of Pennsylvania, was chartered under the provisions of the Natural Gas Act of May 29th, 1885, P. L. 29, for the purpose of dealing in, transporting and supplying natural gas to the public, and was authorized by its charter (subject to obtaining municipal consent to the occupancy of streets) to furnish natural gas in a large number of the municipalities in the State of Pennsylvania, among them by a proper amendment to its charter, being the City of Johnstown. (R. 250.)

The Peoples Company is a public service company under the laws of the State of Pennsylvania, and does not dispute that it is subject to the jurisdiction of the Public Service Commission of Pennsylvania with reference to the furnishing of natural gas in more than seventy-five municipal sub-divisions in the State of Pennsylvania, and it has filed with the Public Service Commission of Pennsylvania, as it is required to do by the Public Service Company Law,

tariffs showing the rates and charges which it makes for such service. The Peoples Company is not qualified to do, nor does it do business anywhere, except in the State of Pennsylvania.

About 66 2/3% of the total gas distributed by the Peoples Company is purchased by it by meter, at the West Virginia State Line, and about 33 1/3% is obtained from wells in Pennsylvania.

The gas purchased, metered and received at the State Line is carried by means of a large main in a northeasterly direction to the City of Pittsburgh, and then in a general easterly direction to the town of Derry, Westmoreland County, Pennsylvania, where there is installed a "booster pump" which gives it sufficient pressure to carry the gas on east to Johnstown and beyond, to Altoona.

Connected into this main pipe line above described, are lateral pipe lines carrying gas produced along the route in Pennsylvania, and at the same time this main pipe line is tapped at various places and gas is taken out to furnish the service to consumers in the more than seventy-five municipalities above referred to, all of which are served *before* the pipe line reaches the City of Johnstown. One-third of the gas so furnished is Pennsylvania gas.

The main pipe line was laid as above described, as far as Derry, and gas was taken in and taken out and distributed, as above described, prior to 1906, at which time a contract was entered into, under date of December 31st, 1906, between the Peoples Company and George W. Crawford *et al.*, by reason of which contract the main pipe line was extended from the town of Derry eastwardly to a point opposite the City of Johnstown, at which point a tap was made to this pipe line, through which tap gas was furnished for distribution to the City of Johnstown.

Later, and in 1912 and 1913, the main pipe line of the Peoples Company was extended by that Company to the Borough of Altoona, a considerable distance east of Johnstown, and gas has been furnished by Peoples Company to the City of Altoona, and its inhabitants, ever since. (R. 163.) About 1/3 of it is Pennsylvania gas.

In constructing the pipe line which serves the City of Johnstown, it became necessary for the Peoples Company to exercise the right of eminent domain, and its sworn petition which was filed in Court seeking to exercise the said right of eminent domain contained the following statement:

"That it is engaged in the business of

> supplying natural gas to the public for heat, light and power to persons, firms and corporations residing in Pennsylvania in the Townships, Boroughs and Cities along the route of its pipe line branches and pipe line systems, and that the pipe line herein described is for the transportation and supply of gas for public use and consumption." (R. 250, F. 1048-A.)

Except for this statement, contained in the petition of the Peoples Company, the right of eminent domain could not have been exercised, because that right can only be exercised for a public use.

By reason of the filing of this condemnation petition and the approval of the damage bond by the Court of Common Pleas of Cambria County, possession of the right of way was obtained by the Peoples Company and the pipe line was laid down.

The contract of December 31st, 1906, above referred to contains the following statement:—

> "WHEREAS, the party of the first part [Peoples Company] is the owner of a large quantity of leases, gas wells and gas producing property, situate in the Counties of Greene, Allegheny, Armstrong, Jefferson, Clarion, Westmoreland and Washington in the State of Pennsylvania, and has a

twenty-inch pipe line leading from Greene County, Pennsylvania, to the City of Pittsburgh, Pennsylvania, which is connected to a line which passes through or near Derry in Westmoreland County, and,

"WHEREAS, the parties of the second part have become the lawful owners of an ordinance and franchise authorizing them to lay mains and pipes in and through the City of Johnstown, Clarion County, Pennsylvania, for the supplying of natural gas to said City, and all the consumers residing or doing business therein, * * * etc." (R. 256, F. 1071-A).

Subsequent to the date of this agreement, the Johnstown Fuel Supply Company (hereafter called Johnstown Company) was incorporated as provided in said agreement and succeeded to all the rights of the parties of the second part, under the agreement above referred to. And under date of August 12th, 1909, the Johnstown Company entered into a new agreement with the Peoples Company which superseded and took the place of the agreement of December 31st, 1906, above referred to. This 1909 Agreement continued in effect, and gas was sold by Peoples Company to the Johnstown Company for distribution in Johnstown under the terms thereof until the first day of October, 1920, when said agreement was terminated by notice of the Peoples Company as provided under its terms.

At the time the Peoples Company notified the Johnstown Company of the termination of the contract of August 12th, 1909, it also served a notice on the Johnstown Company that from and after October 1, 1920, no gas would be furnished by the Peoples Company to the Johnstown Company for sale and distribution by that Company in the City of Johnstown. Copies of this notice were served upon the officials of the City of Johnstown.

Under date of September 1st, 1920, the City of Johnstown filed a petition with the Public Service Commission of Pennsylvania in which the said City asked that the Peoples Company and the Johnstown Company be restrained and enjoined from discontinuing the supply of natural gas to the City of Johnstown and its inhabitants.

The Johnstown Company filed its Answer to the above petition and joined in the prayer of said petition.

Under date of September 13th, 1920, the Public Service Commission issued its preliminary restraining order under which the Peoples Company was enjoined and restrained from discontinuing the supply of natural gas to the Johnstown Company.

The Order:

Thereafter a hearing was had by the Public Service Commission, testimony was taken, and under date of October 3, 1921, the Public Service Commission filed its Report and Order enjoining and restraining the Peoples Company from discontinuing its supply of gas to the Johnstown Company, which said Order is as follows:—

> "Now, to-wit, October 3rd, 1921, It is Ordered: That the Peoples Natural Gas Company, one of the respondents, *shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company*, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13th, 1920.
>
> "Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished." (Italics ours).

It is immaterial to the issue presented at this time, that the Peoples Company on January 27th, 1921, attempted to delimit its territory by corcorporate action so as to be relieved of its charter obligation to furnish service in the City of Johnstown, for the reason that the Supreme Court of the State of Pennsylvania in this very

case has decided that under the laws of the State of Pennsylvania, the Peoples Company cannot so delimit its charter territory without the consent of the Public Service Commission of Pennsylvania, and in this there is no Federal question involved. (See R. 301-2, F. 97, 98).

The Appeal:

The above Order of the Public Service Commission of Pennsylvania is the Order from which the Plaintiff in Error here, appealed to the Superior Court and then to the Supreme Court of Pennsylvania. In each instance the Order was affirmed and is now before this Court on writ of error.

THE NARROW ISSUE:

From the above facts, it is clear that the Peoples Company *can* comply with the Commission's Order without in any way involving gas that may have been produced outside of the State of Pennsylvania, for the reason that no particular gas is specified by the Public Service Commission in its Order and it necessarily follows that if gas that had one time been produced outside of the State of Pennsylvania is delivered by the Peoples Company to the Johnstown Company, it is so delivered solely as a matter of convenience to the Peoples Company. No "*impor-*

tation" from West Virginia is required. Neither the Order nor the facts in the case make "importation" obligatory.

This was clearly pointed out and decided by Mr. Justice Simpson in the decision of the Supreme Court of Pennsylvania, particularly where he said (R. 307):—

> "The same conclusion is reached when the matter is viewed from another standpoint. If we keep steadily in mind *exactly what the subject matter of this appeal is*, it will readily be seen that the orders of the Commission, now being considered, could not be held to contravene, directly or indirectly, the interstate commerce clause of the Federal Constitution, even if Congress had not excluded natural gas from the provisions of the Interstate Commerce Act. Appellant is a Pennsylvania corporation, authorized by its charter to supply such gas to the citizens in given localities. Whether it is furnished because of a duty so to do, or because of authority contained in the charter, the citizens are equally interested in receiving it, and the State's only concern is that they shall all be treated alike. For many (fol. 110) years appellant has been supplying gas to the Johnstown Company on what it is pleased to term a wholesale basis, without regard to where the commodity came from. It did this knowing there was no other visible or prob-

able source of supply, and knowing also that the citizens of Johnstown (as in fact was the case) would rearrange their mode of life, and would go to considerable expense in adjusting their homes to the new system. Solely for the purpose of making the connection with the Johnstown Company's pipes, appellant exercised the right of eminent domain given to it by the State, declaring it did so in order that those citizens might receive the gas it had to supply. As already stated, both before and after reaching Johnstown, it directly served, at retail, the consumers in seventy-five other municipalities. Under such circumstances, it is not unfair to say that the service to the Johnstown Company should be placed in the same class as that to any large retail purchaser, and hence appellant should not be permitted to arbitrarily abandon the service, to the great injury of the citizens who acted on the faith of its continued compliance with the obligations of its charter, solely because it chooses to buy some of the gas produced from wells outside the State. This is especially so since *it has ample gas obtained from wells in the State, to enable it to comply fully with the orders of the Commission,* and no attempt is being made to deprive it of a full and adequate return for the service. Appellant's claim is, therefore, that it may exercise all the rights given to it by the State, and yet avoid the obligations imposed as a condition of their grant, although, so far as now ap-

pears, it is not and cannot be injured by the State's order (fol. 111) to file a schedule of rates, and continue its public duties *pendente lite*. It might, of course, escape compliance, if its interstate business, assuming it has such, would be unduly burdened by the State's requirements. It cannot, however, where, as here, the only effect is to prevent discrimination against certain localities in favor of others, to insure against which possibility appellant is simply required (subject to a later judicial review of all relevant questions of law and fact, whenever it so demands), *to submit to an appropriate tribunal* of the State, the question of *where*, if at all, service may be discontinued. The effect which such a regulation has upon interstate commerce, is as purely *incidental* as anything can well be conceived to be. If the continued compliance with its duties as defined by the law of the State of its incorporation, might (we do not say it does) indirectly affect a commodity received from outside the State, that is purely a matter of corporate management or control, and is no more beyond the State's power than would be an order upon a lighting or heating company to comply with its duty of indiscriminate service, though, the coal or oil used by it was obtained in another State. In neither event could the utility be heard to say: "We cannot comply with our charter obligations, except by obtaining the fuel in interstate commerce, and if we do you cannot regulate it, and hence,

because of this, you cannot require us to comply with your order." A complete answer is: "We do not say you must obtain fuel in interstate commerce; this you may do or not, as you please; but we do say that you must comply with the requirements of your charter, and serve the public justly and without discrimination, or you must surrender the powers conferred upon you by the State." (Italics ours).

OUR FIRST POSITION:

Since the Order of the Pennsylvania Commission is the only thing before this Court, and since that Order does not in terms or by necessity under the facts involve "imported gas," and since, in the language of Mr. Justice Simpson, the Peoples Company "has ample gas obtained from wells in the State [of Pennsylvania], to enable it to comply fully with the orders of the Commission," we submit that no Federal right of The Peoples Company under the Commerce clause is invaded, and that therefore the writ of error should be dismissed.

ISSUE AND FACTS MISCONCEIVED AND MISSTATED BY PLAINTIFF IN ERROR:

The Order of the Commission here reviewed directs the Peoples Company to "continue to supply natural gas, and service incident thereto to the Johnstown Company," no more.

There is not a single word in the Order which compels the Peoples Company, Plaintiff in Error, to supply any West Virginia Gas to the Johnstown Company. There is nothing in the Order or in the facts which compels or requires the Peoples Company to "*import*" any gas from any other state. There is nothing in this Order which in any way affects or burdens or touches gas which is necessarily in Interstate Commerce; and therefore, we respectfully suggest that in their "Statement of the Case," Counsel for the Plaintiff in Error, in the last paragraph on page 14 of their Brief, mis-state the issue when they say that the one question before this Court is,

> "Whether the Pennsylvania Public Service Commission has power to compel the Peoples Natural Gas Company to furnish the Johnstown Fuel Supply Company *interstate* gas". (Italics ours).

There is, we submit, no justification on the Record whatsoever, for the insertion of the word

"*interstate*" above. Gas—Pennsylvania gas—any gas will do.

For the same reason, we submit that there is no justification on the Record for the last sentence in Plaintiff's Brief on page 31, to-wit, that the Peoples Company "has been compelled by the Pennsylvania Commission to furnish and deliver to the Johnstown Company gas, which can *only be obtained in Interstate Commerce.*" As a matter of fact, the Record shows that the Peoples Company has more than enough gas which it produces and collects *in Pennsylvania,* to supply all the needs of Johnstown, as Mr. Justice Simpson has pointed out.

Plaintiff's Fallacy:

Counsel for Peoples Company therefore are in error when they state on pages 14, 30, 31, 32 and intimate elsewhere that the Pennsylvania Commission commanded the Peoples Company *to import* West Virginia gas into Pennsylvania, and to sell such imported gas at a price fixed by the Commission. Judge Linn of the Superior Court was misled by this error of fact, and hence we have taken this much space to point out its constant presence in the Peoples Company Brief.

If this fallacy or misconception of Plaintiff in Error were recognized at the outset much of the argument about Interstate Commerce could

be avoided—for the obvious reason that no Interstate Commerce is in any way involved in the issue now before this Court.

We believe that Plaintiff in Error's entire argument falls down because of this fundamental mistake of fact.

ARGUMENT SUMMARIZED:

Our position therefore is threefold:

FIRST. Interstate Commerce is not involved.

SECOND. The decisions relied on by Plaintiff in error do not rule this case.

THIRD. Even if Interstate Commerce is indirectly affected by the Order, Pennsylvania has jurisdiction until Congress acts to displace her—the matter here being essentially local in its nature.

The facts in this case are so important that we dare to discuss them, even at the risk of some repetition.

CONTROLLING AND UNDISPUTED FACTS DISCUSSED:

The first time the Peoples Company is interested in any West Virginia gas is after it passes the meter at the West Virginia-Pennsylvania State Line (R. 277). It is not interested in any gas while it is in West Virginia, so that if all of the gas in West Virginia disappeared by leak or by waste or otherwise *before* it reached the meter at the state line, it would be no direct concern of the Peoples Company. At the state line, and in Pennsylvania, the gas is first metered; it is there received by the Peoples Company and from that point, *within Pennsylvania,* it is distributed by the Peoples Company all over Western Pennsylvania to Pennsylvania citizens and consumers at the burner tips.

In seventy-eight (78) out of seventy-nine (79) instances where the Peoples Company supplies this same gas to consumers at the burner tips, it admits the jurisdiction of the Public Service Commission of Pennsylvania, and has complied with all of the Commission's orders, by posting rates and rules in accordance with the Public Service Company Law of Pennsylvania.

The Peoples Company is not a transporting company—certainly. It neither directly nor indirectly transports any gas across any state line.

It is a *distributing* company only—and all of its operations are *within* the State of Pennsylvania and are particularly confined to the Western and South Western part of the State of Pennsylvania —where it supplies the inhabitants of seventy-eight (78) cities and communities at the burner tips, and together with the Johnstown Company jointly supplies the citizens of Johnstown with gas at the burner tips.

The Order of the Public Service Commission here under examination, in no way whatsoever, involves interstate gas or interstate transportation. The Order says in effect to the Peoples Company:

> "You must supply gas to the Johnstown Company until you show in a proper proceeding that you are unable to do so."

No citizen or corporation of any foreign state is involved in this litigation or in the Order of the Commission. The Hope Company, frequently brought in by the Plaintiff in Error, is not involved, and its rights can not be urged in this proceeding by this Plaintiff in Error. (Newark Natural Gas Company vs. Newark, Ohio, 242 U. S. at 408). No foreign state is here involved. Transportation across state lines is not involved. Foreign gas is not involved directly or indirectly in the Commission's Order.

Only the State of Pennsylvania, and the Peoples Company, a Pennsylvania Public Service Company, and the citizens of Pennsylvania are involved in or affected by the Commission's Order. The Peoples Company can comply with that order without a foot of West Virginia gas.

There is not one word of testimony in the Record to show that any particular gas or any amount of gas, needed for and intended for Johnstown, destined for Johnstown and actually reaching Johnstown, was ever bargained for in West Virginia, and *there* set in motion on its journey across the state line for Johnstown as its intended ultimate destination.

There is sufficient Pennsylvania gas at the disposal of the Peoples Company to comply with the Order of the Commission. Plaintiff's Brief admits and the Record shows, that even after supplying seventy-eight (78) cities, towns and villages in Pennsylvania with 33-1/3 per cent of Pennsylvania gas, that the Peoples Company still has enough Pennsylvania gas to supply 1-4 of Johnstown's need, and that even after doing so, it can carry its Pennsylvania-produced gas still further East to supply the City of Altoona with their 33-1/3 per cent of its need. And all this with Pennsylvania gas! In short, the Record shows that the Peoples Company *can* supply

Johnstown with all-Pennsylvania gas. If its corporate management chooses to substitute some "imported" gas, that is a discretionary matter with it, decided on for its own convenience, but in no wise affects, or involves or is the result of the Order of the Commission, as Mr. Justice Simpson pointed out in that part of the decision above set forth.

In view of these facts alone, found by the Commission, and affirmed and re-stated by the Supreme Court of Pennsylvania, it seems to us that the question of Interstate Commerce is excluded from this argument, because the Commission ordered Peoples Company to furnish gas, and *the Peoples Company has Pennsylvania gas to furnish.* All argument, therefore, based on the premise that the Peoples Company is *compelled* by the Commission's order to "*import gas from West Virginia*" is based upon a misconception of the facts in the case, and is unsound. No order requires importing gas from anywhere; no order required the Peoples Company to furnish and deliver "West Virginia gas." Nor do the facts in the case require it. No such problem is before us.

No Federal Question is Involved:

If our view of the facts is correct, all the argument of counsel for Plaintiff in Error about Interstate Commerce is directed at a non-existent issue. We submit that the Order of the Commission and the Record present no Federal, Interstate Commerce question. The writ of error therefore should be dismissed.

CASES CITED BY PLAINTIFF IN ERROR DO NOT HOLD THAT THE ORDER HERE VIOLATES THE COMMERCE CLAUSE:

Since the Plaintiff in Error has argued at length that Interstate Commerce *is* here involved and directly burdened, citing numerous cases, we are compelled to lengthen this Brief in order to show that even if some, once West Virginia gas is incidentally involved, that the decisions of the United States Supreme Court not only do not forbid such an order as the Commission has here made, but that those decisions demonstrate that such an order as here made, is entirely within the power of the local state authorities.

An examination and analysis of all the cases cited by the Plaintiff in Error will reveal, we believe, that the United States Supreme Court has uniformly held only that *transportation* of gas across state lines may not be regulated by individual states; or that commerce in interstate

gas may not be regulated by states so as to *directly burden* that commerce; and that certain types of state regulation necessary for local purposes are entirely proper, even though they may *indirectly* affect Interstate Commerce in gas.

In our case however there is no transportation by Plaintiff in Error across state lines; the Order does not affect any gas from any foreign state; there is, we believe, no burdening of any interstate commerce.

Missouri vs. Kansas Natural Gas Co., 265 U. S., 298, the case relied on by Plaintiff in Error does not sustain its counsel's contention. We are compelled to examine it in detail.

Mr. Justice Sutherland in delivering the Opinion of the Court on page 305 *et seq.* said that the single question for answer was:—

> "Whether the business of the Supply Company consisting of the *transportation* of natural gas from one state to another for sale and its sale and delivery to distributing companies, is Interstate Commerce free from state interference." (Italics ours).

He then stated the facts of the case as follows:

> "The Supply Company is a Delaware Corporation engaged in producing and buying natural gas, mostly in Oklahoma but

some in Kansas, and, by means of pipe lines, *transporting it into Kansas* and from Kansas; and from Kansas into the State of Missouri and to distributing companies which then sell and deliver it to local consumers in numerous localities in Kansas and in Missouri. The gas originating in Kansas *is mingled for transportation* with that originating in Oklahoma. The pipe lines are continuous from the wells to the place of delivery." (Italics ours).

The Supply Company had increased its rate from 35c to 40c per thousand, in Missouri without the consent of the Missouri Commission, and in Kansas after the Kansas Court and the Kansas Commission had fixed 35c as the rate.

At page 306 he said:

"The business of the Supply Company with an exception, not important here, *is wholly Interstate.*" (Italics ours).

It will be noticed that the United States Supreme Court like the Supreme Court of Kansas and the two Lower Federal Courts all found as a *fact* that the Supply Company was primarily engaged in the business of *transporting* all of its gas across three State Lines, and that the *transporting* was continuous from Oklahoma into Kansas, and across Kansas and into Missouri, and as this Court said, that *the business of the*

Supply Company was "wholly Interstate." [The Peoples Company, being a distributing company, is in local, intrastate business].

After pointing out that the State may not impose any *direct burdens* on interstate commerce (page 307) even though Congress has not acted, Mr. Justice Sutherland said at 308,

> "That with the delivery of the gas to distributing companies however, the Interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail, is Intrastate business and *is* subject to state regulation." (Citing Public Utilities Com. vs. Landon).
>
> "In such a case the effect on Interstate Commerce is *indirect* and *incidental.* But the sale and delivery here is an inseparable part of the transaction in Interstate Commerce—not local—but essentially *national in character*—and enforcement of a selling price in such a transaction places a *direct burden* on such commerce inconsistent with that freedom of interstate trade, which was the purpose of the commerce clause to secure and preserve. It is as though the Commission stood at the State Line and imposed its regulation upon the final step in the process, at the moment the interstate commodity entered the state and *before* it had become part of the general mass of the property therein." (Italics ours).

THE MISSOURI-KANSAS NATURAL GAS CASE—DISTINGUISHED:

It is seen at once that the essential facts in the above Missouri-Kansas case are *different* from the facts in our case, viz:

(1) In the first place, the Kansas Company was a *transporting* company and was primarily engaged in transporting gas from Oklahoma to Kansas continuously across Kansas and into Missouri. Its everyday business therefore, necessarily and inevitably caused it to affect three different states and to cross three state lines. The Peoples Company, however, is *not* a transporting company in any sense whatsoever. It does *not* transport gas across any state line nor can *it* at this time be heard to assert any rights for the Hope Company. All of the business of Peoples Company is *within* the State of Pennsylvania from the State Line to the City of Johnstown and beyond. And all of its business is that of *distribution* to local consumers within the State of Pennsylvania directly at burner tips by means of its own pipes except in Johnstown, where jointly with the Johnstown Company it distributes its gas to the citizens of Johnstown. In short, the Kansas Company is an interstate transporting company. The Peoples Company is a local distributing company.

(2) The business of the Kansas Company, says the Court, is *wholly interstate,* whereas in our case the Peoples Company admits both by its Brief and in the Record that 78/79 of its business is intrastate; that is, its business is *distribution* of gas in Pennsylvania to Pennsylvania consumers. How this gas which the Peoples Company admittedly has in its possession, *within* the State of Pennsylvania wholly for Pennsylvania purposes and in 78 instances admittedly subject to state control can suddenly reassume or assume an interstate character between the "boosting pump" at Derry and the City gate at Johnstown, all within the state of Pennsylvania, is not explained. Mr. Justice Keller of the Pennsylvania Supreme Court put it this way:

> "The Peoples Company is in no sense a transportation company or common carrier: *Carothers' Appeal,* 118 Pa., 468, 485. It received supplies of gas which had moved in interstate commerce, mingled it with gas produced by it in this state, and then disposed of the mixture in due course to its customers, on its own account exclusively: *Landon case, supra,* p. 245. "Its only business as disclosed by the evidence is the production and supplying of gas. It does transport the gas from the source of supply to the distribution points, but this transportation is incidental merely to the business in which it is engaged. It is necessary that the gas be transported in

pipes but nothing in the evidence tends to show that the defendant is a common carrier. It does not hold itself out as a transporter of gas for other companies or for private individuals. It is the owner of all the gas that is in its pipes and it has never engaged in gas transportation as a business." *Franke vs. Johnstown Fuel Supply Co.*, 70 Pa., Superior Ct., 446, 455. The principle is the same whether its distributing line begins at Brave or at some point eastward; whether it serves one community or seventy-five; if it is purely a distributing and not a transportation company.

"If the Public Service Commission has jurisdiction of the Peoples Company at some point of distribution along its line west or southwest of Johnstown, it follows that it retains that jurisdiction as to all points on its pipe line east of and beyond such point. When the interstate movement once ended in the Peoples Company's pipe line, it did not reassume the character of interstate commerce as the gas continued its flow eastward. The interstate movement actually ended when the gas passed into the main of the Peoples Company for distribution among its customers, which was at the state line at Brave; the "city gate" referred to in some of the decisions, was, in fact, in the present case, at the state line where the delivery was complete and the purchaser received the gas *for purposes of distribution within the state.*"

If, therefore, the gas which the Peoples Company has under its control, within the State of Pennsylvania, is a part of the general mass of the property of Pennsylvania in 78 distinct instances along the pipe line route of the Peoples Company (and this is admitted), it is clear that it must still be a part of the general mass of Pennsylvania property from Derry to Johnstown. The cases differ therefore on this controlling point: in the Missouri-Kansas case all of the business of the transporting Supply Company is *interstate;* in our case all of the business of the distributing Peoples Company is *intrastate.*

(3) In the Missouri-Kansas case, two of the States, Kansas and Missouri, attempted to fix the price of Oklahoma gas, continuously in passage across three State Lines. In our case, the Commission has said nothing whatsoever about any gas which was ever in West Virginia or anywhere else. The Pennsylvania Commission has merely ordered the Peoples Company to supply some kind of gas (and it *can* supply all Pennsylvania gas) to the Johnstown Company, for distribution in Johnstown. It is clear, therefore, that in the Kansas case there is a *direct burden,* by price fixing, upon interstate transported gas. In our case there is not only not a direct burden on any transportation or on any West Virginia business, but there is *no burden*

or regulation at all, which can in any way be construed as necessarily affecting West Virginia gas while in interstate commerce.

(4) The transportation, sale and delivery of Oklahoma and Kansas gas, in the Kansas case is all an inseparable part of an interstate transaction—not local—but essentially national. The Order of the Public Service Commission for the Peoples Company to furnish some gas (and it *can* furnish Pennsylvania gas), to Johnstown, has no interstate character and is therefore not national but entirely local. And even if it should be considered that some West Virginia-produced gas is for purposes of its corporate convenience, chosen by the Peoples Company to be delivered to Johnstown, that West Virginia gas is on the facts lifted out of the general mass of its gas *in this state* which it admits it is distributing under the jurisdiction and supervision of the Public Service Commission of this State and therefore, even such gas which may once have been in West Virginia has lost whatever interstate quality it might once have had (and we deny that it ever had any interstate quality)—and is absolutely local in its character—a part of the general mass of Pennsylvania property.

(5) In the Kansas case, in the language of this Court, some small amount of Kansas gas

"is mingled FOR *transportation*" with the Oklahoma gas, and the transportation is across Kansas into Missouri. It will be noticed that this Court has found that two gases are mingled *for the purpose of transportation* across State Lines. In our case, the gas is not mingled for the purpose of *transportation* but for the purpose of *distribution* by the distributor, and as a matter of fact after it is mingled within the State of Pennsylvania it is not transported across any State Line. The Order of the Pennsylvania Commission does not, either in terms or by necessary implication, deal either with "mingled gas" or with West Virginia gas. The sale price fixed by Missouri and Kansas was in terms directed against gas *mingled for the very purpose of transportation* across State Lines, and was a price imposed upon that mingled gas while it was in the very process of transportation, thereby affecting every single particle thereof. No such Order was made by the Pennsylvania Commission. We repeat again the Pennsylvania Commission said nothing about "mingled" or "imported" or "West Virginia gas." The Pennsylvania Commission didn't even have "mingled" or "imported" or West Virginia gas in mind at the time the Order was made. That Order only says to the Peoples Company: "You must supply *some kind of gas* (and you *can* sup-

ply all Pennsylvania gas) to Johnstown, until by proper legal proceeding you de-limit your territorial Charter obligations." This is entirely a state matter and the Pennsylvania Supreme Court's construction of it is final.

For these reasons, we submit that the Kansas-Missouri case upon which Plaintiff in Error relies, is not in point. The distinction between the two cases is clear. Our only hope is that we have not obscured the distinction by attempting simplification—to use the language of this Court in another case.

We believe that the case of *Public Utilities Company of Kansas vs. Landon,* 249 U. S., 236, cited by Plaintiff in Error is more in point for the reason that the Peoples Company is a *distributing* company, which sells and delivers gas at the burner tips in more than seventy-five cities all over Western Pennsylvania, before its gas reaches Johnstown, and after it passes Johnstown and as the Brief of the Plaintiff in Error points out, at page 37, this is *not* interstate commerce. "Interstate commerce ended when the gas passed into local mains," says Mr. Justice

McReynolds, and on the facts before us the "local mains" of the Peoples Company begin at the State Line and continue on all through Western Pennsylvania where it distributes mingled gas, as Mr. Justice Keller of the Pennsylvania Superior Court points out on page 278 of the Record, ff. 50-51. Insofar as the facts are similar therefore, the *Landon* case, and not The *Missouri-Kansas Case,* rules the case at bar, and is a clear authority for such regulation of the Peoples Company by the Pennsylvania Commission, as is here under review.

The other case, *Pennsylvania Gas Company vs. Public Service Commission of New York,* 252 U. S., 23, also cited by Plaintiff in Error at page 37, is also authority in favor of the Pennsylvania Commission's Order—for in that case, as Plaintiff in Error admits, there was unquestioned interstate transportation of Pennsylvania gas across Pennsylvania-New York State Line right up to the burner tips in Jamestown New York, and yet the New York Commission was held to be authorized to regulate that service, because it was essentially local in its nature and belonged to the State. In the same way, the Peoples Company is a distributor at the burner tips and is therefore subject to local state regulation. For a further discusstion of this point, we refer again to the opinion of Mr. Justice Keller of the Penn-

sylvania Superior Court, at page 278 of the Record, above referred to.

Of course, *the case of Attelboro Steam & Electric Company vs. Public Utilities Com.*, 129 Atlantic, 495, cited in Plaintiff's Brief on page 42 is not in favor of Plaintiff's contention, because we are not dealing with gas "generated in one state and conveyed directly to a purchaser in another state." That such transportation is Interstate Commerce may be true—but in spite of that fact, the Pennsylvania Gas Company case decided by this Court and above cited, held that when distribution at the burner tips is involved, *local authorities may regulate* in spite of what *indirect affect* there may be upon Interstate Commerce. In such a case, it is decided that the local authorities may act until they are affirmatively displaced by Congress. And in this connection, we repeat that *the Peoples Company has not shown and cannot show that any West Virginia gas destined for and delivered to Johnstown is actually bargained for in West Virginia and there started on its journey specifically toward Johnstown in Pennsylvania.* Not only is no specific gas thus started for Johnstown while it is in West Virginia, but no *amount* of gas is there bargained for for Johnstown. And the burden of proving this necessary fact is on the Plaintiff in Error as Mr. Justice Simpson points

out on page 305 of the Record, folio 104, also referred to in Plaintiff's Brief at page 57.

In the Landon case and *in the Pennsylvania Gas Company case* and *in the Attelboro case,* Interstate Commerce existed and was continuous. In this case, on the facts in the Record, *it never began,* because the Peoples Company long ago properly perhaps and shrewdly saw to it, that the Peoples Company should not be interested in any West Virginia gas until it passed the meter at the State Line and *after* it was delivered into the distributing system of the Peoples Company within Pennsylvania. And we insist again that in our case there is always present the further fact that the Peoples Company *can* comply with the Order of the Pennsylvania Commission by furnishing only Pennsylvania gas to the Johnstown Company. Both of these facts compel the conclusion that the Pennsylvania Commission was entirely within its rights in making this Order which it did. No interstate matter is involved.

The case of *Sonneborn Brothers vs. Cureton,* 262 U. S., 506, cited in Plaintiff's Brief at page 43 is, we believe, in favor of our contention, because there it was decided that oil, already in the state and thereafter sold, was subject to state tax; so here the so-called West Virginia gas re-

ceived into the Peoples distributing system, within Pennsylvania, and after it had passed the meter at the State Line, and after it is mingled with Pennsylvania gas in Pennsylvania, for distribution in Pennsylvania, is without question a part of the general mass of property in Pennsylvania, subject to Pennsylvania regulation. For all practical purposes the wide spread distribution system of the Peoples Company all over Western Pennsylvania, is a *reservoir* within this state, into which Pennsylvania gas is continuously pumped for distribution purposes, and this is particularly true of the "mingled" gas after it passes Derry because there a "booster pump" is the effective means of moving this "mingled" gas along within the State of Pennsylvania, to Johnstown, and beyond to Altoona. Like the coal mentioned in the case of *Brown vs. Houston,* 114 U. S., 622, the West Virginia gas has fully lost its distinctive character as an import and is subject to regulation by the State of Pennsylvania.

In order that there may be no misunderstanding therefore of our position, we take this opportunity to deny the statements of alleged facts at the bottom of page 45 of Plaintiff's Brief, and repeat that the facts in the case are that the Peoples Company gets its gas *in* Pennsylvania, after Interstate Commerce has ended—or as we

believe, before it ever began. If this is not so, why the metering on the State Line? Until that West Virginia gas has passed the meter, the Peoples Company is not interested in a single specific cubic foot of gas in the pipe lines of the Hope Company in West Virginia, either through title or through contract for quantity. We believe it is a fair conclusion, in view of the state of the law as it existed when the Hope Company contract was drawn, that this very meter was put at the State Line for the purpose of eliminating any possibility of Interstate Commerce, for in those days, Congress *did* regulate commerce and Public Utilities interested therein, whereas Pennsylvania had not yet undertaken to do so.

The second argument advanced by Plaintiff in Error, at page 57, that the natural gas purchased by Peoples Company from the Hope Company and sold to the Johnstown Company is a commodity in Interstate Commerce, is we believe both unsound and irrelevant. We have already discussed the proposition, so call attention briefly to our reasons.

(1) The proposition is unsound because, on the facts the gas is not bargained for until after it passes the meter at the State Line; because so far as it concerns Peoples Company, the gas

comes into being *within* Pennsylvania and there it is mixed in the Peoples' distributing lines, *for distribution purposes,* and is served at burner tips all over its system. If it ever was in Interstate Commerce, it has lost its interstate character before it reaches Johnstown.

(2) The proposition is irrelevant, because, on the facts the Commission's Order before the Court does not involve West Virginia gas, and that Order can be complied with by the Peoples Company without any reference to West Virginia Gas. Furthermore, the Order in fact, involves only local Pennsylvania proceedural law concerning the delimitation of territorial Charter rights which involves no Federal question.

The cases cited under this argument do not support the main contention of the Plaintiff in Error. The case of *United Fuel vs. Halanan,* 257 U. S., 277, merely decides that the State of West Virginia may not impose a tax upon transportation of gas in interstate pipe lines. On the facts in that case, "the great body of gas starts for points beyond the states and goes to them." The tax on such transportation was clearly a direct burden on commerce which is clearly interstate and affected citizens of other states. No such transportation is affected by the Order in our case.

The case of *Pennsylvania and Ohio vs. West Virginia,* 262 U. S., 553, decides that the State of West Virginia may not prohibit and prevent the *exportation* of gas across its state line. And that question is not involved in the present case.

Neither of these cases is in point here.

In answer to Plaintiff's argument on page 63, respecting the Hope Company, we merely point out that the Pennsylvania Commission's Order does not directly or indirectly regulate or burden or affect any exportation of gas by the Hope Company from West Virginia. We do not contend that the Hope Company does not or cannot do an interstate business. That is not before us. Our sole contention is that the Commission's Order does not regulate or burden any interstate commerce engaged in by the Peoples Company at Johnstown. If we have repeated this statement unnecessarily often we urge in extenuation the continuous appearance of the opposite view in our opponent's Brief.

In *Dahnke-Walker Milling Company vs. Bondurant,* 257 U. S., 282, the Court held that Kentucky could not require a Tennessee corporation to obtain a Kentucky license in order to buy grain in Kentucky for shipment across state lines to its Tennessee mills, because the whole transaction was interstate commerce.

In *Western Union vs. Foster,* 247 U. S., 105, the Court only decided that the Massachusetts Public Service Commission could not compel the New York Exchange in New York to render certain ticker service to a subscriber in Boston. That is, since citizens of at least two states were concerned in the commerce, the power of Massachusetts is limited by the commerce clause.

In the case of *Lemke vs. Farmers Grain Company,* 258 U. S., 50, wheat was bought in North Dakota and there loaded on cars with the *intention* of shipping it *across state lines* to Eastern markets. The Court said, that the usual orders came from outside the state of North Dakota, and that the wheat loaded in cars in North Dakota was generally consigned to a commission merchant in Minneapolis, Minnesota. And at page 54, the Court added, "that such a course of trade constitutes interstate commerce there can be no question."

The distinction, therefore, is clear. In our case no state line is crossed by gas in which the Peoples Company is concerned *after it is concerned.* It gets its gas beyond the meter, and *after* it is across the state line. For instance, as we said above, if every foot of that West Virginia gas escaped or was lost before it passed the meter at the Pennsylvania state line the Peoples

Company would not and could not be concerned. After the Peoples Company gets it, however, *in* Pennsylvania, it, the Peoples Company, transports, controls and distributes it locally *in* Pennsylvania. In short, only a Pennsylvania corporation and Pennsylvania citizens are concerned —no national interest, therefore, is involved. No other state and no citizen of *another* state is involved. The Peoples Company business is intrastate. In the *Lemke* case the wheat was bought in North Dakota, but it was *intended* for consignees in other states, it was set aside for persons in other states and was shipped by the grain dealers, to persons in other states, principally in Minneapolis, Minnesota. The attempt on the part of the State of North Dakota to control and regulate such trade by requiring such grain dealers to be licensed by North Dakota and the attempt of North Dakota to fix and prescribe the profits of dealers in such a transaction was held to be a direct burden on interstate commerce. The case therefore is not at all analogous to the instant case.

After this review of the cases cited by Plaintiff in Error we submit that none of them is authority for the conclusion that the Pennsylvania Commission's Order violates any right of the Peoples Company under the Commerce clause of the Federal Constitution.

CASES RELIED ON BY DEFENDANT IN ERROR:

Our chief reliance is on the facts in the case, among which are these: (1) The Peoples Company is a distribution company, not a transporting company. (2) It admits the jurisdiction of the State Commission in 78 out of 79 instances where it serves customers at burner tips. (3) Together with the Johnstown Company it serves the consumers in Johnstown. (4) It has enough Pennsylvania gas to supply Johnstown, and (5) last and most important, the *Order of the Commission*—the only thing before this Court—does not involve any interstate commerce gas—either in its terms or by necessary implication—or by facts in the case.

We contend that a correct understanding of the facts alone is conclusive against Plaintiff in Error.

And yet we believe that decided cases in this Court where the facts are in some respects similar to ours, are a further and complete answer to the Plaintiff's contention.

(1) The case of *Pennsylvania Gas Company vs. Public Service Com. of New York*, 252 U. S., 23, already discussed, affirms the right of a state to regulate the price of gas admittedly

in interstate commerce, where it was being distributed to consumers. Such matters of local concern must be left to the State until Congress acts to the contrary. Surely what the New York Commission did was more direct and more regulatory that what the Pennsylvania Commission did in the Order now being reviewed. The case is clearly against Plaintiff's contention.

(2) The *Landon* case, 249 U. S., 236, already referred to, is to the same effect. Interstate commerce ends, it holds, when imported gas enters the local mains—i. e., the distributing lines. Our view is that all of the lines of the Peoples Company are distributing lines—i. e., are "local mains", for the reason that the Peoples Company is entirely and everywhere a distributing company—furnishing gas to consumers at burner tips all over Western Pennsylvania.

3. *Pennsylvania Gas Co. vs. Saxe,* 229 N. Y., 446, was decided after this Court affirmed the State Commission's authority in the *Pennsylvania Gas Co.* case in 252 U. S. In it Mr. Justice Cordoza in a scholary and exhaustive opinion reviews the *Landon* case and the *Pennsylvania Gas* case in 252 U. S., and shows that this Court sustains the right of the *receiving state* to regulate the internal business of the gas company which sells—and clearly distinguishes

between regulation of *transportation between states,* and regulation of *sales of gas, within a state,* and points out what is true in the case at bar, namely that *we have no regulation of a duty owing equally to two states*—West Virginia and Pennsylvania—but a regulation of a *duty owing to one state alone,* and *to its inhabitants,* namely the duty of reasonable local gas service at fair and reasonable cost in Johnstown, jointly furnished by the appellant and the Johnstown Company. In fact the real question now before this Court is narrower still; it is this:—

> "Will this Court interfere with an order of the Pennsylvania Commission intended to compel a Pennsylvania Public Service Company to perform its charter obligation, interstate commerce being not involved, or involved only incidentally."

4. A helpful and a recent United States Supreme Court case on the general problem is *Bowman vs. Continental Oil Co.,* 256 U. S., 642, also referred to by Judge Keller. There the Court passed upon a New Mexico statute which imposed an excise tax on the use of gasoline at distributing stations and in the operation of appellants tank wagons. The Court at 648 said that it had no difficulty with the case for "manifestly gasoline thus used has passed *beyond interstate commerce,*" and thus "the contention that

the tax interferes with interstate commerce because the gasoline is the product of other states has been disposed of," p. 649.

In like manner we believe with Judge Keller that if the West Virginia gas here in question ever was in interstate commerce (and we deny it)—it has become merged in the general mass of Pennsylvania property when placed into the distributing mains of the Peoples Company and mixed with Pennsylvania gas *for distribution* to consumers, locally, at the burner tips.

5. To show that this Court has always given *locality* weight and has recognized that services seemingly continuous are often in fact *separate*, we cite one last case:

Pennsylvania Railroad Company vs. Knight, 192 U. S., 21 (1904) which seems squarely in point on this whole question.

The facts as stated by Mr. Justice Brewer were about these: The Pennsylvania Railroad Company established a cab stand on its own premises at the 23rd St. Ferry in the City of New York and maintained a service of cabs and coaches under special licenses from the City of New York whereby they could stand on those premises only. The sole business done by those

cabs and coaches was to bring the company's passengers to and from its ferry from 23rd St. to Jersey City. The charges for this service were separate from those of the company for further transportation and no part of its receipts from cab service is received as compensation for any service outside the State of New York. A franchise tax was assessed on the said taxi-business, by New York statutes, and the railroad company urged its invalidity under the Interstate Commerce Clause of the Constitution. The statute was upheld, and the Court said:

> "The contention of the Company is that the cab service is a mere extension and therefore a part of its interstate transportation; that it is not carrying on a cab business *generally*, but it is merely furnishing service to those who seek to take, over its lines, *some interstate transportation*, thus commencing the transportation from their houses instead of from the ferry landing, or like service to those who have already received such interstate transportation. * * * In other words the Company to promote its general business, seeks only to complete the continuous transportation of interstate passengers, and that the character of the service depends on the purpose of the Company in providing it, and that the omission to charge for the cab service in charges for other transportation arises from the practical difficulty

of making the inclusion and does not alter the fact that such cab service is a part of the interstate transportation. * * *

"It is true that a passenger over the Pennsylvania Railroad to the City of New York does not in one sense fully complete his journey when he reaches the ferry landing on the New York side, but only when he is delivered at his temporary or permanent stopping place in the city. Looking at it from this standpoint, the Company's Cab service is simply one element in a continuous interstate transportation, and as such would be excluded from state and be subject to national control. * * * *On the other hand, the cab service is exclusively rendered within the limits of the city. It is contracted for and paid for independently of any contract or payment for strictly interstate transportation.* The party receiving it owes no legal duty of crossing the state line. * * * So the Pennsylvania Company which is engaged largely in interstate transportation, *is amendable to state regulation* and state taxation as to any of its service which is *wholly performed within the state,* and not as part of interstate transportation. *Wherever a separation in fact exists between service wholly within the state and that between the States, a like separation may be recognized between the control of the State and that of the Nation.*

"The cab service is rendered wholly within the State and has no contractual or

necessary relation to interstate transportation. It is either preliminary *or subsequent thereto.* It is independently contracted for and not necessarily connected therewith. *But when service is wholly within the State, it is presumably subject to state control.* The burden is on him who asserts that though actually within, it is legally outside the state, and *unless the interstate character is established, locality determines the jurisdiction.*" (Italics ours).

We believe that this case and ours are quite analogous. Even if the Hope Company of West Virginia and the Peoples of Pennsylvania together carry on a continuous interstate transportation, still, like the cab service of the Pennsylvania system *the actual daily operation of the Peoples Company is that of local distribution of gas and no more.* A separation in fact between service wholly within Pennsylvania and service between Pennsylvania and West Virginia clearly *exists,* and therefore a separation in control inevitably follows, and Pennsylvania has jurisdiction. Furthermore, applying the reasoning of the Court's last paragraph we submit that *locality* must govern here for the Appellant has not met and cannot meet the burden on it of showing that any gas whatsoever while in West Virginia is allotted to, destined for and actually reaches the consumers of Johnstown.

The careful and studied contractual arrangement by which the Peoples Company and the Hope Company years ago succeeded in keeping the operations of the Peoples Company wholly *intra state* is still a fact in this case, and cannot now be overlooked or modified so as to make the Peoples Company engaged in interstate carriage and commerce. The facts in the record make the Peoples Company a local Pennsylvania *distributor of gas,* and so far as concerns Johnstown Fuel Supply Company, only in the most indirect way is it connected with West Virginia gas or the Hope Natural Gas Company. The latter company must speak for itself. The issue here is only the Order of the Commission.

We have restricted our Brief to the issue as presented by the facts and the Order of the Pennsylvania Commission. Other questions, such as the jurisdiction of this Court and the finality of the judgment below we leave to other counsel.

CONCLUSIONS:

We submit that no Federal Constitutional right under the Commerce Clause, belonging to the Peoples Natural Gas Company is violated by the Order of the Pennsylvania Public Service Commission, dated October 3rd, 1921,

FIRST: Because that Order does not involve or affect gas in interstate commerce,

SECOND: Because such gas of West Virginia origin as Peoples Company chooses to deliver to the Johnstown Company, has lost its interstate character by being received in the distribution system of the Peoples Company—solely a distributing company, and

THIRD: Because the Order is at most a necessary regulation of local service, only indirectly affecting interstate commerce, and therefore on the authority of the *Landon* case in 249 U. S. and of the *Pennsylvania Gas Co.* case in 256 U. S., a lawful exercise of state authority until Congress assumes a superior control.

For all of which reasons the writ of error should be dismissed.

Respectfully submitted,

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Peoples Natural Gas Co. vs. Public Service Commission of the Commonwealth of Pennsylvania, 279 Pa. 252; (R. 298-310).

The judgment in the last case is the one to which the writ of error relates.

COUNTER STATEMENT OF THE CASE

Because the Assignments of Error urged in this Court and printed at pages 22 to 25 of the Brief for Plaintiff in Error are based upon the erroneous assumption that the order of the Public Service Commission of the Commonwealth of Pennsylvania, referred to in the second assignment of error, and the decree of the Supreme Court of Pennsylvania, referred to in the first assignment of error, required the Peoples Natural Gas Company, plaintiff in error, "to furnish the Johnstown Fuel Supply Company (one of the defendants in error) with natural gas imported into Pennsylvania from the State of West Virginia" and undertake "to fix the price at which the Peoples Natural Gas Company must sell said gas to the Johnstown Fuel Supply Company," we deem it necessary to avail ourselves of the permission granted under paragraph 3 of Rule 21 of your Honorable Court to controvert the plaintiff in error's statement of the case.

The assignments of error are manifestly predicated upon the assumption that the natural gas purchased by appellant at the Pennsylvania-West Virginia State line is a commodity in interstate commerce and that the Public Service Commission of the Commonwealth of Pennsylvania has ordered appellant to furnish this gas to the Johnstown Fuel Supply Company and has undertaken to fix the price therefor and that the Supreme Court of the State of Pennsylvania has affirmed such action of the Public Service Commission of that State. This is a plain misconception of the tenor and effect of the order of the Public Service Commission of the Commonwealth of Pennsylvania, affirmed by the Supreme Court of that State. The Supreme Court of Pennsylvania has pointed out in its opinion (R. 308, fol. 110) that the Peoples Natural Gas Company has an ample supply of gas obtained from wells in Pennsylvania to enable it to comply fully with the orders of the

Commission and that no attempt is being made to deprive it of a full and adequate return for the service. Again, the Public Service Commission of the Commonwealth of Pennsylvania has not decided that the Peoples Natural Gas Company may not discontinue its service at the City of Johnstown, but has merely ordered it to continue such service until it has applied for and obtained the permission of the Commission for such discontinuance by showing proper grounds therefor.

A statement of the history of this litigation and the substance of the orders of the Commission and the decrees of the Superior and Supreme Courts of Pennsylvania will demonstrate that said orders and decrees cannot possibly have the effect attributed to them in the assignments of error as filed by the learned counsel for the plaintiff in error.

We shall endeavor to state the facts essential to an understanding of the real issues arising upon this appeal as concisely as possible.

On the 26th day of June, 1885, The Peoples Natural Gas Company, appellant herein, was incorporated as a Pennsylvania corporation under the provisions of the Act of May 29, 1885, P. L. 29, for the purpose of "producing, dealing in, transporting, storing and supplying natural gas." (R. 237-239.)

It is specified in the Articles of Association that the places where natural gas is intended to be mined for and produced or received are certain designated townships in the counties of Allegheny, Westmoreland and Washington, in the state of Pennsylvania.

In the 4th paragraph of the Articles it is stated that the places where gas is to be supplied to consumers "are the cities of Pittsburgh and Allegheny:" By certain extensions rights were secured covering the construction of lines as far east as Johnstown and Altoona, Pa.

The appellant, The Peoples Natural Gas Company, now has gas wells in Greene, Washington, Allegheny, Armstrong, Indiana and Clarion Counties, Pa.

It produces practically one-third of its supply of natural gas from its wells in Pennsylvania and purchases practically two-thirds at Brave, on the West Virginia State line, from the Hope Natural Gas Company, a separate and independent West Virginia corporation (R. 30, fol. 75a; 38, fol. 88a, 89a) but whose stock is owned by the same interests.

It is stated at page 16 of the Brief for plaintiff in error that the Standard Oil Company of New Jersey is the owner of the stock of each of these companies but we believe that there is no evidence of this fact in the record and the learned counsel for plaintiff in error was careful to prove that the Peoples Natural Gas Company and the Hope Natural Gas Company "are entirely separate and independent" (R. 38, fol. 89a). It is further stated at said page 16 of the Brief for plaintiff in error that there was a contract between said gas companies, under the terms of which the Hope Company constructed its pipe line from its gas fields in West Virginia to a point on the West Virginia-Pennsylvania State line near the town of Brave and that the Peoples Company, the Pennsylvania corporation, extended its pipe line to the same point "where the two lines were connected," and that under said contract the Hope Company was required to transport the gas to the West Virginia State line and there deliver it to the Peoples Company. It is further stated that "pursuant to this contract the gas flows through the pipe lines in a continuous stream from the wells in West Virginia, where it is produced, to the various points in Pennsylvania where it is consumed." No such contract was ever offered in evidence at any stage of this litigation and the only evidence with relation to the obtaining by the Peoples Natural Gas Company of gas produced in West Virginia is the testimony of John G. Pew, the former President of the Peoples Natural Gas Company, in which he states that the Peoples Company purchased about two-thirds of its supply from the Hope Company, by meter

measurement, at the West Virginia State line (R. 31, fol. 75a).

The appellant furnishes natural gas to domestic consumers in Pittsburgh, Wilkinsburg, Greensburg, Latrobe and practically all the towns along the line of the Pennsylvania Railroad as far east as Altoona, and has voluntarily filed with The Public Service Commission its schedule of rates and tariffs for such supply at the respective boroughs and cities reached by its lines, with the exception of the City of Johnstown (R. 32, fol. 78a; 37, fol. 86a).

The gas supplied by appellant for use in the city of Johnstown by domestic and industrial consumers is furnished under the provisions of a contract between The Johnstown Fuel Supply Company and appellant, dated August 12, 1909, and received in evidence as Exhibit "J-3" (R. 240-247).

The appellant supplies gas to no other gas company in the same way that it furnishes its product to the said Johnstown Fuel Supply Company (R. 36, fol. 86a).

It sells some gas to the United Natural Gas Company in Clarion County from the field and makes occasional sales to the Philadelphia Company in emergencies but appellant's method of supplying gas at the City of Johnstown is different from that adopted by it in any other instance.

Various pipe lines of appellant converge at Derry and from that point a 12-inch line was built eastwardly through the Conemaugh Valley about 1906 to the city line of Johnstown.

Some years later, about 1912 or 1913, the appellant extended its service to Altoona by building a 14-inch line, branching from the said 12-inch line at a point which is located a mile or two west of Johnstown, and thence eastwardly to Altoona (R. 32, fol. 78a; 36, fol. 85a; 43, fol. 98a).

The contract of August 12, 1909, (R. 240-247) states that it is intended to supersede a former contract between The

Peoples Natural Gas Company and the Johnstown Fuel Supply Company under date of December 31, 1906.

In the course of the construction of said 12-inch pipe line from Derry to Johnstown, the appellant found it necessary to exercise its power of eminent domain with respect to laying said line across the farm of B. F. Garvey in Lower Yoder Township, Cambria County, which farm is located between the said point where the said 14-inch line to Altoona branches from said 12-inch line and the city of Johnstown.

The bond of appellant in said proceedings was approved by the Court of Common Pleas of Cambria County on April 23, 1907, at No. 375, June Term, 1907.

These proceedings terminated in a settlement between the parties and the execution of a right-of-way agreement by the landowner for a consideration of $1,000 under date of November 13, 1908 (R. 250-256).

Of the gas supplied by the appellant through its various pipe lines at Pittsburgh about 66 2/3% comes from the West Virginia fields, and of the gas furnished at Johnstown about 75% is produced in West Virginia (R. 41, fol. 95a; 42, fols. 95a, 96a).

The Johnstown Fuel Supply Company was incorporated May 3, 1907, under the said Act of May 29, 1885, P. L. 29, "for the purpose of producing, dealing in, transporting, storing and supplying natural gas" in "the City of Johnstown in the County of Cambria, State of Pennsylvania, and its suburbs, etc.," (R. 247-249). On July 15, 1916, the said Johnstown Fuel Supply Company filed a new tariff or schedule of rates with the Public Service Commission materially increasing the rates theretofore charged to consumers in the City of Johnstown for natural gas. Pursuant to the provisions of the Public Service Company Law of the State of Pennsylvania, approved July 26, 1913, P. L. 1374, (West Pa. Stat. 740), a complaint was filed against this increase in rates on behalf of the City of Johnstown by Louis Franke, the then Mayor of said city, and it is this

complaint which became the basis of all subsequent proceedings. It appeared from the answer of said Johnstown Fuel Supply Company to said complaint that its supply of natural gas was purchased by it from the Peoples Natural Gas Company under the provisions of the above mentioned contract of August 12, 1909, (R. 240-247), "which contract, *inter alia*, provided for a payment to the said Peoples Natural Gas Company of 70 per cent. of its gross actual receipts from the sale of all natural gas for domestic consumption and 75 per cent. of its gross receipts from the sale of natural gas under special contracts approved by the said Peoples Natural Gas Company." It thus appearing that the terms of said contract materially affected the expenses of the said Johnstown Fuel Supply Company, the Commission thereupon directed the said Peoples Natural Gas Company to intervene as a party respondent in the pending complaint. The Peoples Natural Gas Company filed an original and amended demurrer and an answer to said complaint, setting up, *inter alia*, that its rights and duties were fixed by the said contract and that the relationship between it and the Johnstown Fuel Supply Company did not constitute a public service; that the gas contracted to be supplied by it was largely produced in the State of West Virginia and that the contract was a contract relating to interstate commerce, etc., and denying the jurisdiction of the Commission. In passing it may be proper to state that it has never been contended by anyone in this case that the Public Service Commission of the Commonwealth of Pennsylvania has any jurisdiction over the West Virginia corporation (the Hope Natural Gas Company) or any power to regulate the rates at which that company shall sell its gas to the Peoples Natural Gas Company at the State line.

Supplemental complaints were filed before the Commission against both the Johnstown Fuel Supply Company and the Peoples Natural Gas Company, averring that, although the latter company was a public service company of the Commonwealth of Pennsylvania and had been engaged in

the business of transporting and supplying natural gas for public consumption in various places in western Pennsylvania; had exercised its right of eminent domain for the purpose of laying pipe lines for the transportation and distribution of gas to the City of Johnstown and was engaged jointly with the said Johnstown Fuel Supply Company in supplying gas for public consumption in the City of Johnstown under the said contract, by the terms of which it directed and controlled the rates to be charged such consumers; yet, in violation of said Public Service Company Law of the Commonwealth of Pennsylvania, and in violation of General Order No. 8 of the Commission, it had neglected and refused to file, publish and post, as required by said Public Service Company Law, its tariffs and schedules showing the prices, charges, rates and other compensation asked, demanded or received for the service rendered or furnished by it at, or in, the said City of Johnstown. It was upon this complaint that the Public Service Commission made its order of December 4, 1917, (R. 187, fols. 791, 792), requiring said Peoples Natural Gas Company to file, post and publish according to law its tariff and schedule of rates covering the service complained of in said complaint within fifteen days after the service of said order. This order is the order affirmed October 30, 1918, by the Superior Court of Pennsylvania *(Franke vs. Johnstown Fuel Supply Company, 70 Pa. Superior Ct. 446;* R. 190-198).

From this decree of the Superior Court an appeal was taken by the Peoples Natural Gas Company to the Supreme Court of Pennsylvania, which appeal was dismissed by that Court on June 26, 1920, upon the ground that the order of the Commission appealed from was not a final order and the appeal was therefore premature *(Peoples Natural Gas Company vs. Public Service Commission of the Commonwealth of Pennsylvania, 268 Pa. 235;* R. 198). Numerous increases in rates have been filed from time to time by both the Peoples Natural Gas Company and the Johnstown Fuel

Supply Company, increasing the rates to consumers in the City of Johnstown. Complaints have been filed against each of said increases in behalf of the City of Johnstown and the question of what constitutes a reasonable rate for the supplying of natural gas to the domestic consumers in the City of Johnstown has not as yet been determined by the Public Service Commission of the Commonwealth of Pennsylvania because this litigation has been diverted, from time to time, upon appeals taken by the Peoples Natural Gas Company upon jurisdictional questions. The Public Service Commission of Pennsylvania has never had an opportunity to pass upon the merits of the real questions involved in this litigation, namely: whether the Peoples Natural Gas Company should be permitted to discontinue the public service it has been rendering for many years at the City of Johnstown and, if not, what is a reasonable rate to be paid it for the gas supplied by it for use in the City of Johnstown. Following the decision of the Supreme Court of Pennsylvania dismissing said appeal the Peoples Natural Gas Company, in alleged compliance with the order of the Commission, filed what purported to be a supplement to its existing tariffs, in which supplement the above mentioned contract was quoted and notice was given that the furnishing of gas would be discontinued to the Johnstown Fuel Supply Company on October 1, 1920.

On August 25, 1920, Joseph Cauffiel, successor in office to the said Louis Franke, filed a Complaint against this supplement, alleging that it was not a compliance with the order, or, if considered a tariff by the Commission, then that the rates were unjust and unreasonable. The issue raised by this complaint has not yet been determined by the Commission.

In view of the threat to discontinue the supply of natural gas for the inhabitants of the City of Johnstown on October 1, 1920, the city, acting through its mayor, on September 1, 1920, filed a complaint against both gas companies praying

for an order to restrain them from discontinuing the supply of gas (R. 201-204).

The Peoples Natural Gas Company filed an answer to this complaint, (R. 205-206) challenging the jurisdiction of the Commission to compel it to continue to supply gas.

The Johnstown Fuel Supply Company filed an answer (R. 211-216) joining in the prayer of the petition of the City of Johnstown.

Up to this point the controversy had been a contest by the City of Johnstown against both gas companies, with some side issues; but here the Johnstown Fuel Supply Company joined with the city in its effort to compel the Peoples Natural Gas Company to continue the supply of gas.

Under date of September 13, 1920, the Commission made an order (R. 206-207) requiring and directing both companies "to continue the public service rendered by each of them in the supplying of natural gas in the City of Johnstown until December 1, 1920, and until the further order of the Commission."

This is the order which really formed the basis for the second appeal to the Superior Court, although the appeal was taken technically from a later order, under date of October 3, 1921, (R. 274, fol. 43) refusing to vacate said order of September 13, 1920, at the instance of appellant, and reaffirming the prior order.

On January 27, 1921, The Peoples Natural Gas Company undertook, without asking the permission or approval of the Public Service Commission, to abandon that part of its trunk pipe line extending from a point on its main line between Derry and Altoona toward Johnstown a distance of about 9,821 feet and being the line laid under its right of eminent domain as above stated, and to alter its territory of supply of natural gas for consumption by excluding therefrom the City of Johnstown and vicinity and the territory along said 9,821 feet of trunk line.

This attempt to abandon said line and curtail its terri-

tory of supply, so as to enable it to carry natural gas past the City of Johnstown and over the mountains to Altoona, where appellant sells gas directly to domestic consumers, was made by filing a certificate under Sec. 5 of the Act of May 29, 1885, P. L. 29, with the Secretary of the Commonwealth and recording the same in Cambria County (R. 262-264).

Testimony was taken on various dates between July 6, 1921, and September 13, 1921, and particularly on the question of abandonment of service (R. 140-164).

On September 14, 1921, the appellant filed a petition (R. 217-219) for a vacation of the said restraining order of September 13, 1920, or if that be refused praying that the Commission fix a rate to be paid by the Johnstown Fuel Supply Company to appellant.

Answers were filed by the City of Johnstown and Johnstown Fuel Supply Company (R. 219-224).

After argument before the Commission an opinion was filed and order made under date of October 3, 1921, directing "that the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920." Permission was also granted to appellant to file, post and publish a schedule of rates for the gas and service thus supplied (R. 274, fol. 43).

Thereupon an appeal was taken to the Superior Court and the City of Johnstown and Johnstown Fuel Supply Company were duly permitted to intervene.

Availing itself of the permission granted in said order the Peoples Natural Gas Company filed a new schedule of rates for the service rendered by it at Johnstown fixing a rate of 40 cents net, per thousand cu. ft. of monthly consumption for gas supplied by it to Johnstown Fuel Supply Company, and the latter company filed a new schedule in-

creasing its rate to domestic consumers from 30 cents to 54 cents net, and continuing in force a ready to serve charge of 50 cents per month.

In an opinion filed October 9, 1922, and written by Judge KELLER for the majority of the Court and, from which Judges PORTER and LINN dissented, the Superior Court affirmed the order of the Commission of October 3, 1921 *(Peoples Natural Gas Co. vs. Public Service Commission of Pennsylvania, 79 Pa. Superior Ct. 560;* R. 275-278).

This judgment of the Superior Court was affirmed by the Supreme Court of Pennsylvania on February 4, 1924, in an opinion by Mr. Justice SIMPSON *(Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 279 Pa. 252;* R. 298-310). It is to be observed that neither the Public Service Commission of Pennsylvania nor either of the State Courts undertook to direct the Peoples Natural Gas Company to supply any part of the gas which was produced in West Virginia and which it purchased at the State line to the Johnstown Fuel Supply Company and it is entirely possible, as found by the Supreme Court of Pennsylvania, for the Peoples Natural Gas Company to comply with the order of the Public Service Commission by furnishing gas produced by it in Pennsylvania for use at the City of Johnstown. This controversy began over the question of the reasonableness of rates charged to consumers of natural gas in the City of Johnstown but, through the giving of notice by the Peoples Natural Gas Company that it would discontinue supplying gas for use in Johnstown on October 1, 1920, it has developed into a far more serious question for the inhabitants of that city. The testimony taken September 13, 1921, (R. 140-166) was directed toward showing the injustice of refusing to supply the 11,000 consumers in the City of Johnstown, who have more than $700,000 invested in fixtures and appliances necessary to make use of natural gas, and then carrying the gas past the City of Johnstown and farther east over the mountains to the City of Altoona, where the Peoples Natural Gas

Company supplies gas to consumers at the burner tips. As pointed out by Commissioner Reed in the opinion of the Commission supporting the said order of October 3, 1921, (R. 274, fol. 42) this "testimony is not sufficiently informing on which to base a finding," and all that was decided by the Commission was that the Peoples Natural Gas Company could not discontinue its service at Johnstown without the permission of the Commission. This is all that was decided by the appellate courts of Pennsylvania. In concluding the opinion of the majority of the Superior Court, Judge KELLER said (R. 282, fol. 59):

> "We are not now called upon to decide whether, if appellant had made application to the Commission for leave to eliminate the City of Johnstown from its field of supply, it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission."

The question of the right of the Peoples Natural Gas Company to discontinue its service at Johnstown without the permission of the Commission is, however, we conceive, a question under the laws of the State of Pennsylvania which is not reviewable in this Honorable Court and our only purpose in mentioning it here is to show that the order of the Public Service Commission and the decrees of the appellate courts of Pennsylvania are not nearly so broad in their scope and effect as the learned counsel for the plaintiff in error assume them to be in their assignments of error.

The Supreme Court of Pennsylvania having declined to grant a writ of error under Rule 86 of that Court, a writ was allowed by Mr. Justice BUTLER of your Honorable Court (R. 323, fol. 143).

ARGUMENT

As we understand the questions involved under this writ of error they may be discussed under three propositions:

I. IS THE ORDER OF THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, AFFIRMED BY THE SUPREME COURT OF THAT STATE, A FINAL ORDER REVIEWABLE IN THIS COURT?

II. THE PLAINTIFF IN ERROR IS NOT ENGAGED IN INTERSTATE COMMERCE IN THE TRANSACTION OF ITS BUSINESS AT THE CITY OF JOHNSTOWN.

III. EVEN IF IT BE HELD THAT THE PLAINTIFF IN ERROR IS ENGAGED IN INTERSTATE COMMERCE, THE ORDER OF THE PUBLIC SERVICE COMMISSION AND THE DECREES OF THE APPELLATE COURTS OF THE COMMONWEALTH OF PENNSYLVANIA DO NOT AFFECT SUCH COMMERCE IN ANY WAY.

I

IS THE ORDER OF THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, AFFIRMED BY THE SUPREME COURT OF THAT STATE, A FINAL ORDER REVIEWABLE IN THIS COURT?

We respectfully submit that it may well be doubted whether the order of the Public Service Commission of the Commonwealth of Pennsylvania, affirmed by the Superior and Supreme Courts of that State, is a final order reviewable in this Court under the provisions of Section 237 of the Judicial Code. At the bottom of page 6 of their brief the learned counsel for plaintiff in error state that:

"The Public Service Commission of the State of Pennsylvania entered an order *compelling* the plaintiff

> in error to supply to the Johnstown Fuel Supply Company natural gas *which was a commodity in interstate commerce.* It was contended in the Supreme Court of Pennsylvania that the order of the Commission was void as an *unlawful interference* with interstate commerce. (See 6th Assignment of Error in the Supreme Court of Pennsylvania, R. 289, fol. 73.)" (Italics ours.)

We cannot agree with this interpretation of the order of the Public Service Commission of the State of Pennsylvania. It is our contention that there has as yet been no final order by that Commission; that the several orders appealed from were merely interlocutory orders and that the appeals from these orders raised merely jurisdictional questions, all of which can properly be raised upon an appeal from such final order as the Commission may ultimately make. It is respectfully suggested that there can be no final order by the Commission until plaintiff in error shall have applied to the Commission for leave to discontinue its present public service at the City of Johnstown.

If the Commission should grant such permission, and it is possible that it may grant it, upon a proper showing by plaintiff in error, or, if the appellate courts of Pennsylvania should reverse the Commission in the event of its refusal of such permission, there will be absolutely nothing to review.

If the Commission should finally refuse to grant such permission, and such action should be affirmed by the appellate courts of Pennsylvania, then, and then only, would there be a final order involving any Federal question.

The learned counsel for the plaintiff in error have made no effort to secure a decision upon the merits of the real question involved, viz., whether it should be permitted by the Commission to curtail its present public service by eliminating the City of Johnstown from its territory of supply, but have persistently sought, and obtained, a review of each

of the two interlocutory orders made by the Commission as necessary preliminaries to a decision upon the merits. Plaintiff in error has continuously endeavored to evade the regulatory power of the Commission by denying the Commission's jurisdiction over it with respect to the business it has been transacting for a number of years. All of the questions which have been decided adversely to its contentions up to the present time have been jurisdictional questions which will be involved and finally adjudicated on an appeal from such final order as the Commission may hereafter make. And although appeals from these jurisdictional orders were entertained and disposed of by the appellate courts of Pennsylvania, in view of the provisions of our Public Service Company Law relating to appeals from the orders of the Commission, the orders appealed from were, nevertheless, interlocutory in effect and we respectfully suggest that there has as yet been no final order properly reviewable by the Supreme Court of the United States.

An examination of the orders of the Commission and of the opinions of the appellate courts of Pennsylvania will, we believe, demonstrate that the learned counsel for plaintiff in error have misconstrued the effect of these orders and decrees when they assert in the above quotation from their Brief that the Commission "entered an order compelling the plaintiff in error to supply to the Johnstown Fuel Supply Company natural gas which was a commodity in interstate commerce."

Plaintiff in error seems to be under the impression that one of the questions involved is whether the Commission has power to make an order compelling one natural gas company to supply its product to another for sale to the customers of the latter. However, both Commissioner Reed and Judge KELLER, in their respective opinions, have pointed out that this question is not involved in these proceedings. Commissioner Reed speaking for the Commission (R. 272, fol. 39) said:

> "The question, therefore, is not whether a company producing natural gas can be compelled in the first instance to supply its gas to an independent company engaged in distributing it to consumers, but whether having established such relation and being so engaged, it may, under the facts and circumstances of this case, abandon the service at will."

Again Judge KELLER, speaking for the majority of the Superior Court (R. 282, fol. 59) said:

> "The question before us is not, as stated by appellant, whether one natural gas company can be compelled to furnish another natural gas company with gas for its corporate purposes, but rather, where one natural gas company has for years voluntarily been supplying another such company with gas for consumption by the public in a municipality within the first company's charter field of supply, whether it may summarily discontinue such service and eliminate said municipality from its charter field of supply, without first applying to and obtaining the consent of the Public Service Commission."

The order of the Commission of December 4, 1917 (R. 187, fols. 791, 792) directing the plaintiff in error to file its tariffs, was clearly an interlocutory order and the appeal from that order was dismissed by the Supreme Court of Pennsylvania upon the ground that the order was purely interlocutory (R. 198, 199, *Peoples Natural Gas Company vs. Public Service Commission, 268 Pa., 235*).

Then came the notice by plaintiff in error that it would discontinue supplying natural gas at Johnstown and, upon application of the city, the Commission made the order of September 13, 1920 (R. 206, fol. 841a).

This order is merely an order to continue the service *"until the further order of the Commission."* Instead of making a proper application for permission to discontinue

its service at Johnstown, the company on September 19, 1921, applied to the Commission for the vacation of the said order of September 13, 1920 (R. 217-219, fols. 866a, 867a).

After hearing and argument the Commission entered its order of October 3, 1921, in the following language:

> "Now to wit, October 3, 1921, It Is Ordered: That the Peoples Natural Gas Company, one of the respondents, shall continue to supply natural gas, and service incident thereto, to the Johnstown Fuel Supply Company, the other respondent, for distribution in the City of Johnstown as set forth in a prior order of the Public Service Commission, dated September 13, 1920.
>
> "Permission is hereby granted the Peoples Natural Gas Company, respondent, to file, post and publish, according to law, a tariff schedule of rates for the gas and service thus supplied and furnished" (R. 274, fol. 43).

It is clear that all that has been decided by the Commission in these orders is that plaintiff in error is engaged in a public service at the City of Johnstown; must file a tariff of its rates for such service and may not discontinue the service until it shall have applied to, and upon a proper showing of facts secured from, the Commission permission to curtail the service which it has been rendering for many years. Of course throughout these proceedings the plaintiff in error has persistently challenged the jurisdiction of the Commission to make these orders, *inter alia*, upon the ground that it is engaged in interstate commerce with respect to its business at Johnstown and that these orders imposed burdens upon this interstate commerce. The Commission and the Pennsylvania appellate courts held that the orders do not contravene the interstate commerce clause of the Federal Constitution, even if Congress had not excluded natural gas from the Interstate Commerce Act, because the orders are purely incidental to the performance of plaintiff

in error's charter obligations and have no more effect upon interstate commerce than would an order requiring a lighting or heating company to continue indiscriminate service, although it obtained its coal or oil in another State: and that the orders of the Commission merely prevent discrimination and are not directed against interstate commerce or any of its regulations.

In speaking for the majority of the Superior Court, Judge KELLER said (*Peoples Natural Gas Company vs. Public Service Commission, 79 Pa. Superior Ct., 560;* R. 275-282, fol. 59):

> "We are not now called upon to decide whether if appellant had made application to the Commission for leave to eliminate the City of Johnstown from its field of supply it should have been allowed. We only decide that it cannot obtain the privilege of a release from part of its charter obligations without first applying to and securing the consent of the Public Service Commission.
>
> "To that extent the assignments of error are overruled and the order of the Commission is affirmed."

Again, Mr. Justice SIMPSON, speaking for the Supreme Court of Pennsylvania (*Peoples Natural Gas Co. vs. Public Service Commission, 279 Pa., 252;* R. 308, fol. 111), describes the orders of the Commission as orders "to file a schedule of rates, and continue its public duties, *pendente lite.*"

Moreover in the course of the opinion it is further said (R. 309, fol. 113):

> "As already stated, it has not been decreed that appellant may not be exempted from supplying gas for the benefit of the citizens of Johnstown, while still furnishing it to those in other localities, but only that it must first apply to the Public Service Commission for leave so to do, in order that there may be a public determination as to its rights in this respect."

In the next place Mr. Justice Simpson points out clearly in the opinion of the Supreme Court of Pennsylvania (R. 309, fol. 113) that the Commission has not undertaken to direct plaintiff in error to supply the Johnstown Fuel Supply Company with any part of the natural gas purchased by it at the West Virginia State line. It is stated in the opinion that by virtue of the authority contained in its charter the plaintiff in error has drilled wells in the State of Pennsylvania and obtains from them more than enough gas to supply all the consumers in Johnstown and that it is entirely feasible for plaintiff in error to comply with the order of the Commission by controlling and apportioning its supply of gas in such manner that the City of Johnstown may be served with gas flowing from wells in Pennsylvania. With respect to the character of the order of the Commission, which is the foundation of the appeals, the Supreme Court of Pennsylvania said (R. 310, fol. 114):

> "In order to avoid misapprehension, however, we should add that *we do not decide the order complained of is so far final as to be the proper basis for an appeal.* If we had sustained the motion to quash on the ground that it was not, the only effect would have been to postpone, until after final decree, the consideration of the questions herein decided. Hence, since we agree with appellee on the merits, and are admonished by the fundamental law that litigants are entitled to 'justice without * * * delay,' we have deemed it best to shorten, as far as may be, future proceedings in this long drawn out litigation." (Italics ours.)

Here is an express recognition by the Supreme Court of Pennsylvania of the fact that "future proceedings" before the Commission will be necessary to a disposition of this case upon its merits.

Thus far plaintiff in error has refused to submit the merits of this case to the determination of the Commission

and has elected to rely on its contention that the Commission has no regulatory power over it with respect to its service at the City of Johnstown or, in other words, to challenge the jurisdiction of the Commission over it. The various delays and interruptions in the normal course of the litigation have all been occasioned by the several appeals of the plaintiff in error from the interlocutory orders of the Commission.

We respectfully submit that all that the Public Service Commission or the appellate courts of Pennsylvania have decided is that the plaintiff in error must continue its present service at the City of Johnstown, *pendente lite*, and that the order of the Public Service Commission and the decree of the Supreme Court of Pennsylvania, which plaintiff in error now seeks to reverse, are not such final judgments as are reviewable in this Honorable Court.

When the test prescribed by Mr. Justice SUTHERLAND in *Georgia Railway Company vs. Decatur, 262 U. S. 432 (1922)*, is applied to the present situation it would seem that the order and decree in question are not final judgments or decrees. In that case it is said that:

> "The judgment or decree 'must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it had already rendered.' "

In the light of the record in this case the argument of the learned counsel for the plaintiff in error at pages 88 and 89 of their brief is, to say the least, based upon an erroneous view of the real situation.

From the moment the supplemental complaint of the Mayor of the City of Johnstown was filed on September 24, 1917, (R. 178-181) the plaintiff in error became, not an intervenor, but a party respondent in these proceedings and has been, at every stage of the proceedings, and still is, a

respondent before the Commission. As stated in the brief for plaintiff in error at page 87, and as set forth in our statement of the case, the plaintiff in error has from time to time filed new schedules before the Commission, increasing its rates for its service at Johnstown, and complaints have been filed by the City of Johnstown against each increase in rates.

That under the practice of the Commission these complaints are docketed at different numbers is immaterial as they all relate to the same controversy, to wit: the reasonableness of the rates charged by plaintiff in error and the Johnstown Fuel Supply Company for natural gas served to the inhabitants of the City of Johnstown. The plaintiff in error has throughout the course of this litigation prevented the Commission from reaching a decision on the merits by various pretexts. In the first place the jurisdiction of the Commission was challenged upon constitutional grounds and the next effort of plaintiff in error consisted of its attempt to discontinue its service at Johnstown. With respect to this device the Superior Court said *(Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 79 Pa. Superior Ct. 560; R. 281, fol. 56)*:

> "If a natural gas company retains the arbitrary power to punish a community which has the hardihood to question any of its rates, regulations, or practices, by cutting it out of its field of supply and refusing to furnish it any gas at all, if it may evade the orders of the Commission relative to its service at any particular place by eliminating that place from its field of operations, the Legislature might just as well not have declared such corporations subject to supervision and regulation by the Commission. We cannot agree to such a proposition."

This language was approved by the Supreme Court of Pennsylvania *(Peoples Natural Gas Company vs. Public*

Service Commission of Pennsylvania, 279 Pa. 252; R. 303, 304, fol. 102). In reply to the assertions contained in the first paragraph on page 89 of the brief for plaintiff in error we desire to state most emphatically that the parties have not lost interest in the real subject-matter of this controversy, namely: the reasonableness of natural gas rates at the City of Johnstown and that they are eager to bring this issue to a conclusion but have been prevented from securing a determination of this matter by the Commission through the persistent attempts of the plaintiff in error to evade the jurisdiction of the Commission.

The statement in the second paragraph on page 89 of the brief of plaintiff in error to the effect that all complaints against it directly have been disposed of before the Commission is of course incorrect. The complaints against the rates charged by plaintiff in error for gas furnished at Johnstown, as set forth in its several tariffs for this service, are pending and not disposed of before the Commission and cannot be disposed of until the collateral jurisdictional questions raised by plaintiff in error have been adjudicated.

II.

The Plaintiff in Error is not Engaged in Interstate Commerce in the Transaction of Its Business at the City of Johnstown.

We respectfully contend that when the principles of law announced by this Court in *Public Utilities Commission vs. Landon, 249 U. S. 236; Pennsylvania Gas Company vs. Public Service Commission, 252 U. S. 23,* and *Missouri vs. Kansas Natural Gas Company, 265 U. S. 298,* are applied to the *real* facts in this case the conclusion will follow that plaintiff in error is not engaged in interstate commerce in the rendition of the service which it has been rendering for many years at the City of Johnstown. The last case above mentioned, namely: *Missouri vs. Kansas Natural Gas Com-*

pany, 265 U. S. 298, was decided by this Court May 26, 1924, which is subsequent to the decision of the Supreme Court of Pennsylvania now under review and both the *Landon* case and the *Pennsylvania Gas Company* case are reviewed by Mr. Justice SUTHERLAND in the said *Kansas Natural Gas Company* case. The whole argument for plaintiff in error is based upon a plain misconception of the actual facts involved in this case and this we respectfully submit, is equally true of the dissenting opinion in the Superior Court of Pennsylvania. At pages 28 to 31 of the brief of the learned counsel for plaintiff in error is found a statement of what they say are "the undisputed facts" in the case. We take sharp issue with some of the facts there stated and respectfully submit that this statement does not by any means contain all of the material facts. In the first place there is no evidence in this record that we know of to support the statement that the Standard Oil Company of New Jersey owns every share of stock of the plaintiff in error and also owns all the stock of the Hope Natural Gas Company, the West Virginia corporation referred to in this case It does appear from the testimony of John G. Pew (R. 31, fol. 75) that these companies are "owned by the same interests" and we have no doubt that the "interests" there referred to are, as stated by counsel, the Standard Oil Company of New Jersey

It is stated by counsel that there is in existence a contract between the Peoples Company and the Hope Company, under the terms of which the Hope Company brings the gas through pipes belonging to it to the Pennsylvania-West Virginia State line and there "delivers" it into the pipes of the Peoples Natural Gas Company.

Reference is again made to this contract at pages 55 and 56 of the brief for plaintiff in error. This contract was not offered in evidence at any stage of these proceedings and the only evidence relative to the purchase of gas by plaintiff in error from the Hope Natural Gas Company is found in the following quotation from the testimony of Mr. Pew,

President of the Peoples Company and called by us for cross-examination at page 31, fol. 75, of the record:

> "Q. You purchase about two-thirds of your supply? From where do you buy it?
>
> "A. In West Virginia, at the West Virginia State line, by meter measurement.
>
> "Q. From whom do you buy it?
>
> "A. The Hope Natural Gas Company.
>
> "Q. Is the Hope Natural Gas Company controlled or operated by the same people as the Peoples Natural Gas Company?
>
> "A. It is owned by the same interests as the Peoples Natural Gas Company.
>
> "Q. And it owns producing wells in West Virginia?
>
> "A. It owns a great many producing wells in West Virginia."

With respect to this matter the Supreme Court of Pennsylvania *(Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 279 Pa. 252; R. 305, fol. 104)* said:

> "As already pointed out, the only evidence regarding appellant's acquisition of gas outside of Pennsylvania, is that it was purchased "in West Virginia, at the West Virginia State line, by meter measurement." Exactly what this means is not clear, and the burden of making it so was upon appellant, which is seeking thereby to obtain immunity from a just regulation by the State of its incorporation. It certainly can mean no more than that the gas was bought in West Virginia, for delivery at the State line, the quantity to be there ascertained by meter measurement."

The effort of counsel for plaintiff in error to get this contract before the Court through their references at pages 63 and 64 of their brief to other cases in this Court is of course unwarranted and so far as this case is con-

cerned none of us knows anything about the terms of this contract. In connection with this matter it is well to bear in mind that counsel for plaintiff in error were particularly careful to prove by the testimony of Mr. Pew (R. 38, fols. 88, 89) that the Peoples Company and the Hope Company "are entirely separate and independent." The following examination of Mr. Pew was conducted by Mr. Gordon as counsel for plaintiff in error:

"Q. The question was asked, Mr. Pew, about your relationship as between the Peoples Company and the Hope Company.

"A. Yes.

"Q. Does the Peoples Natural Gas Company own any stock in the Hope Gas Company?

"A. They do not.

(fol. 89a)

"Q. Does the Hope Company own any stock in the Peoples Company?

"A. They do not.

"Q. Those two companies are entirely separate and independent?

"A. Yes, sir.

"Q. What you meant to say was that the stock ownership of both companies is vested in the same interests?

"A. I believe that was the question, really. That was really the question, as I understand it.

"Q. But there is no interlocking stock ownership between the two companies themselves?

"A. There is not; no, sir."

The statement quoted at the bottom of page 30 of the brief for plaintiff in error from the dissenting opinion of Judge Linn of the Superior Court, and repeatedly made throughout the brief, to the effect that the gas supplied by plaintiff in error at Johnstown can only be obtained in West Virginia is based upon a misapprehension of the real facts.

It is made perfectly clear in the opinion of the Supreme Court of Pennsylvania, at page 308, fol. 110, of the record, that plaintiff in error "has ample gas obtained from wells in the State to enable it to comply fully with the orders of the Commission and no attempt is being made to deprive it of a full and adequate return for the service." Again, Mr. Justice SIMPSON, at page 309, fol. 113, of the record, says:

> "Its contention in effect is, therefore, that although it is a public service company, incorporated by this Commonwealth, and, by virtue of the authority contained in its charter, sinks wells in this State and obtains from them more than enough gas to supply all the consumers in Johnstown, yet no public authority can be allowed to consider its rights to discontinue this production and supply, because, and because only, it also purchases gas in other States, under authority of the same charter, and for convenience in general distribution, mixes the two volumes of gas and carries them in a single pipe line. That is, because it chooses to mingle the two streams of gas it can, solely, by this act of its own, wholly defeat the State's power of regulation of the gas obtained from wells in the State. This of course cannot be. If it should become necessary to separate the streams, in order to obey the commands of the State, appellant would have to do this, the interstate commerce gas, if it is such, being more than sufficient to supply its consumers in all other places than Johnstown. This also is, therefore, merely a matter of corporate management or control in apportioning the supply."

Facts as Stated by Superior and Supreme Courts of Pennsylvania

In order that there may be no criticism of our statement of the real facts in the case we take the following statement of facts every syllable of which is supported by the testi-

mony and exhibits, from the opinion of the Superior Court of Pennsylvania *(Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 79 Pa. Superior Ct. 560; R. 275-282, at page 277)*:

> "Appellant is a Pennsylvania corporation. It has no lands or pipe lines outside the State of Pennsylvania, and does not own or transport any gas in any other state. It has gas wells in at least six counties in this state and produces 11/28 of all the gas it sells. It buys a very small quantity from another Pennsylvania Company but most of the gas not produced by it,—practically 17/28 of its (fol. 48) supply,—it buys outright at the state line from the Hope Natural Gas Company, a West Virginia corporation which mines or procures the gas in that state. The gas thus received into its pipe lines at the state line near Brave, Greene County, is commingled with gas produced in its own wells in Greene County, Washington County, and Allegheny County [Pennsylvania] and is supplied to its own customers at the burner tips under special franchises to about 75 cities and boroughs in Pennsylvania. A branch line goes out from one of these main lines at McKeesport, from which the company supplies its customers in Jeannette, Greensburg and Latrobe, and the Johnstown Company, and from this line, at a point about 9,821 feet west of the Johnstown City Line, runs a line to Loretta, Portage, Cresson, Summit, Altoona and Juniata [Pennsylvania]. Of the gas transmitted by this branch pipe line, about three-fourths is bought from the Hope Company and one-fourth is produced from the Peoples Company's own wells. It maintains a pumping station at the state line, near Brave, and one at Derry on the branch line serving the Johnstown Company. It does not make a business of wholesaling its gas; in fact, in every instance, except to the Johnstown Company, it furnishes the gas to its consumers at the

burner tips and is a local distributing company. The fact that, operating under special franchises, it distributes the gas to 75 different localities does not make it any the less a distributing company."

So that the geographical location, of which we assume this Court will take judicial notice, of the counties, towns and cities referred to in the above quoted statement of facts may be clearly understood it is proper to say that Greene County is in the southwestern corner of the State of Pennsylvania and that Washington and Allegheny Counties are in the southwestern portion of that state. The territory supplied by the Peoples Natural Gas Company is the southwestern portion of Pennsylvania and as far east as the City of Altoona, Blair County, Pennsylvania. The towns and cities referred to in the testimony are located along the Western Division of the main line of the Pennsylvania Railroad, which main line extends from the City of Pittsburgh in western Pennsylvania to the City of Philadelphia at the eastern boundary of the state, and the Western Division thereof extends from the City of Pittsburgh to the City of Altoona. The Borough of McKeesport is a suburb of the City of Pittsburgh; the Boroughs of Jeannette, Greensburg and Latrobe are located along the line of the said Western Division of said Pennsylvania Railroad between the Cities of Pittsburgh and Johnstown, Latrobe being approximately 40 miles east of Pittsburgh and the City of Johnstown being approximately 76 miles east of Pittsburgh.

From Johnstown the line of said railroad passes eastwardly over the Allegheny Mountains through Portage, Cresson and Summit to the City of Altoona, which is approximately 113 miles east of Pittsburgh. The 75 different localities above referred to are in the general territory above described and for the purposes of this case attention may be directed to the Borough of Latrobe, which is about 36 miles west of the City of Johnstown, and to the City

of Altoona, which is about 37 miles east thereof. At each of these points and at intervening points both east and west of the City of Johnstown gas is supplied by plaintiff in error, in the language of the Superior Court "to its own customers at burner tips under special franchises." A few additional facts are stated by Mr. Justice SIMPSON in the opinion of the Supreme Court of Pennsylvania *(Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 279 Pa. 252; R. 298, fols. 92, 93)* in the following language:

> "The Peoples Natural Gas Company (hereinafter called the Peoples Company) was chartered by this Commonwealth, under the provisions (fol. 92) of the Natural Gas Act of May 29, 1885, P. L. 29, for the purpose of dealing in, transporting and supplying natural gas to the public, and was authorized (subject to obtaining municipal consent to the occupancy of the streets) to furnish it in a large number of municipalities of this State, among them, by an amendment to the charter, being the city of Johnstown.
>
> At the time the Public Service Company Law of July 26, 1913, P. L. 1374, went into effect, and during the entire period covered by this litigation, the Peoples Company purchased much of the gas it needed from the Hope Natural Gas Company of West Virginia, (a "separate and independent" corporation, hereinafter called the Hope Company) which piped it from wells in that State to a point on the line between the States of Pennsylvania and West Virginia, and there delivered into the pipe line of appellant, which had no title to or interest in the gas until it passed into Pennsylvania, the Hope Company having none thereafter. In the petitions and answers filed by appellant, it is repeatedly stated that the gas was furnished because of a contract between the two companies, the terms of which were not disclosed, however, the only evidence on the point being that the gas was purchased "in

West Virginia, at the West Virginia State line, by meter measurement."

The pipe line of the Peoples Company, containing the gas thus purchased, was connected at various points in this State, with other pipe lines, carrying gas obtained from its Pennsylvania wells, and part of the combined gas was delivered by it to consumers in a large (fol. 93) number of municipalities of the State, before reaching a point opposite the city of Johnstown. In order that gas might be supplied to users in that city, appellant entered into a contract with the Johnstown Fuel Supply Company (hereinafter called the Johnstown Company, which was also chartered under the Natural Gas Act of 1885, and had municipal consent to the use of the streets), by virtue of which appellant expressly agreed to and thereafter did construct a spur from its main line to a point near the city, and there connected with the line of the Johnstown Company, through which gas was delivered to consumers in that city, appellant receiving, as consideration for the gas so furnished, certain percentages of the amounts paid by the consumers. It subsequently continued its pipe line beyond Johnstown, and since then has supplied private consumers in certain municipalities reached by this extension. None of its gas is sent out of the State of Pennsylvania."

Discussion of Legal Principles

The learned counsel for plaintiff in error throughout their argument make frequent references to the above cited case of *Missouri vs. Kansas Natural Gas Company, 265 U. S. 298,* and insist in the conclusion of their brief that the case now at bar is ruled by this decision of your Honorable Court. When the controlling facts in this case are compared with the facts as stated by Mr. Justice SUTHERLAND in the *Kansas Natural Gas Company* case it will be

found that there is no more similarity between this case and the case cited than there is between night and day and that there is not even a twilight zone into which this case might fall. In the opening sentences of the opinion Mr. Justice SUTHERLAND says that the question involved in that case was "whether the business of the Kansas Natural Gas Company * * * consisting of the transportation of natural gas from one state to another for sale, and its sale and delivery, to distributing companies, is interstate commerce free from state interference?"

The mere statement of the question involved at once distinguishes the case at bar from the Kansas Natural Gas Company case. *There* the natural gas company was a corporation of the State of Delaware and its business consisted of the *transportation* of natural gas produced and bought, mostly in Oklahoma but some in Kansas, across the state line between these states and also across the state line from Kansas into Missouri for sale and delivery to *distributing companies* in each state; *here* the company is a *Pennsylvania corporation* and its business is that of *producing, dealing in, storing and supplying* natural gas in the *State of Pennsylvania* and its sales in the ordinary course of its business are made, *not to distributing companies,* but to individual consumers of its product at their burner tips in seventy-five municipalities and local communities all within the State of Pennsylvania. The essential facts in the Kansas Natural Gas Company case are stated by Mr. Justice SUTHERLAND in the following language:

> "The Supply Company is a Delaware corporation, engaged in producing and buying natural gas, mostly in Oklahoma but some in Kansas, and, by means of pipe lines, transporting it into Kansas and from Kansas into the State of Missouri, and in each State selling and delivering it to distributing companies, which then sell and deliver it to local consumers in numerous communities in Kansas and Missouri. The gas originating in Kansas is mingled for transportation in the

same lines with that originating in Oklahoma. The pipe lines are continuous from the wells to the place of delivery."

The Kansas Gas Company was a foreign corporation owning continuous pipe lines in three states through which it transported natural gas across state lines and sold it in wholesale quantities to local distributing companies.

The Peoples Gas Company is a *domestic corporation* and does not own a single foot of pipe line outside the boundaries of Pennsylvania. It is not a transportation company and, with the single exception of the transactions between it and the Johnstown Fuel Supply Company at Johnstown, sells its product *by retail* to many thousands of consumers in many different localities in Pennsylvania who consume it at their burner tips. In the language of Judge KELLER speaking for the Superior Court of Pennsylvania, *Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 79 Pa. Superior Ct. 560; R. 278, fols. 50, 51):*

> "The Peoples Company is in no sense a transportation company or common carrier; Carothers' Appeal, 118 Pa. 468, 485. It received supplies of gas which had moved in interstate commerce, mingled it with gas produced by it in this state, and then disposed of the mixture in due course to its customers, on its own account exclusively: Landon case, supra, p. 245. 'Its only business as disclosed by the evidence is the production and supplying of gas (fol. 51). It does transport the gas from the source of supply to the distribution points, but this transportation is incidental merely to the business in which it is engaged. It is necessary that the gas be transported in pipes but nothing in the evidence tends to show that the defendant is a common carrier. It does not hold itself out as a transporter of gas for other companies or for private individuals. It is the owner of all the gas that is in its pipes and it has never engaged in gas tran-

portation as a business:' Franke vs. Johnstown Fuel Supply Co., 70 Pa. Superior Ct. 446, 455. The principle is the same whether its distributing line begins at Brave or at some point eastward; whether it serves one community or seventy-five; if it is purely a distributing and not a transportation company."

With respect to the transactions between the Peoples Company and the Johnstown Fuel Supply Company we are not prepared to concede that these transactions amounted to a sale by the Peoples Company to the Johnstown Fuel Supply Company similar to the sales made by the Kansas Company to the local distributing companies. The relations between the Peoples Company and the Johnstown Company began with the contract of 1909 (R. 240-247). Under the terms of this contract, which need not be discussed in detail, it is a fair inference that the Peoples Company was indirectly supplying the consumers at Johnstown through the Johnstown company. For the very purpose of extending its pipe line to a point near the City of Johnstown in order to be able to supply gas to the Johnstown company for consumption by the public it exercised its right of eminent domain under the laws of Pennsylvania, and in the condemnation proceedings declared of record "that the pipe line herein described is for the transportation and supply of gas for public use and consumption." As pointed out by Mr. Justice SIMPSON for the Supreme Court of Pennsylvania *(Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 279 Pa. 252; R. 307, fol. 108):*

> "It adopted an indirect method of doing so [distributing gas] because that course benefited it by enabling it to avoid ruinous competition with a rival corporation, then fully equipped for the service and having equal rights in the territory."

For all practical purposes therefore in this case it may be said that the Peoples Company does not make any sales

at wholesale to distributing companies comparable with the sales made by the Kansas company in the case cited.

Upon the facts in the Kansas Natural Gas Company case this Court reached the conclusion that it was engaged in interstate commerce and that the several states involved had no power to fix the rates at which it must dispose of its product to the distributing companies. The exact language of this portion of the opinion is:

> "But here the sale of gas is in *wholesale quantities*, not to consumers, but to *distributing companies* for resale to consumers in numerous cities and communities in different states. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an *established course of business.*" (Italics ours.)

We earnestly contend that this language could not possibly be applied to the facts in the instant case.

In reaching the conclusion in the case cited your Honorable Court extended and applied to the facts in that case the legal principles laid down in another case above mentioned, namely: *Public Utilities Commission vs. Landon, 249 U. S. 236:*

In the *Landon* case, it was shown that the said Kansas Natural Gas Company, a Delaware Corporation, owned a system of pipe lines extending from Oklahoma and Kansas points, to some forty terminal towns and cities in Kansas and Missouri. The company procured its gas in Kansas and Oklahoma, but obtained none in Missouri. It transported its Oklahoma gas by its own pipe lines into and through Kansas and over into Missouri. Its principal business was the supplying of natural gas to local companies for ultimate sale to their customers, and receiving therefor, a definite proportion—generally two-thirds—of the gross amount paid by such customers.

In our case, the plaintiff in error does not produce or

purchase any gas in another state, and, of course, does not transport any gas across any state line.

The Missouri and Kansas Public Service Commissions, claiming jurisdiction over the distribution and sale of gas in those states, and power to fix the rates which local companies should both pay and charge therefor, suspended some proposed advances to consumers, and threatened to enforce further appropriate orders if found necessary.

The receivers of the Kansas Natural Gas Company alleging that this action by the Missouri Commission and other state commissions resulted in imposing upon the receivers inadequate and confiscatory rates and unduly burdened the interstate commerce which they were carrying on by transporting and selling gas, asked for an injunction to restrain the Commissions, certain municipalities, and the distributing companies, from interfering with the establishment of reasonable and compensatory rates.

The Court below held that the business carried on by the receivers was interstate commerce of a national character, that the action of the Commission interfered with the establishment and maintenance of reasonable sale rates and thereby burdened interstate commerce and took the receivers property without due process of law, and accordingly enjoined the commission from interfering with the establishment of such reasonable and compensatory rates as the court might approve.

This Court overruled the conclusion of the District Court that "local companies in distributing and selling gas to their customers, acted as mere agents, immediate representatives or instrumentalities of the receiver, and as such carried on without interruption interstate commerce set in motion by them."

The opinion continues: "That the distribution of gas through pipe lines from one state to another is interstate commerce, may not be doubted. Also, it is clear that, as part of such commerce, the receivers might sell and deliver

gas so transported to local distributing companies free from *unreasonable interference* by the *state.*"

This Court then held that the sale and delivery of gas to their customers at burner tips by the local companies, operating under special franchises, could in no proper sense be said to constitute any part of interstate commerce and that the interstate movement ended when the gas passed into the local mains.

As the challenged orders of the commission related directly to prices for gas burned at tips and only indirectly to the receiver's business, and as the court below had reached an erroneous conclusion with respect to the interstate commerce aspect of the case, the decrees awarding the injunctions were reversed and the cause remanded for further proceedings in conformity with the opinion of this Court.

Under the principle established in the *Landon* case we respectfully submit that, even if it be assumed for the sake of argument that the gas of the Hope Natural Gas Company produced by it in West Virginia and brought by it in its pipe line to the state line is a commodity in interstate commerce, that commerce ceases at the Pennsylvania-West Virginia State line, which becomes, in our case, the "city gate" referred to in some of the decisions.

There is, we respectfully submit, no similarity between the course of business of the Peoples Company and the course of business of the Kansas Gas Company in the two cases already decided by this Court and relied upon by counsel for plaintiff in error.

In the language of the Superior Court of Pennsylvania (R. 270, fols. 52, 53):

> "The Peoples Company buys gas outright at the state line and, exercising franchise rights, distributes the gas thus owned by it, mixed with gas produced by it in this State, to its customers in various cities and towns in Pennsylvania, constituting a transaction whol-

ly *intrastate* in character. And, as above pointed out the character of *intrastate* transmission once having attached to the gas in appellant's pipe line, it is retained throughout its whole length thereafter."

In connection with the above quotation it should be pointed out that the word "interstate" as printed in the record at page 279, fol. 53, in the third line from the bottom of the paragraph, is a typographical error for the word "intrastate," as appears from an examination of the record of the Superior Court of Pennsylvania as printed in the official reports of this case under the title of *Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania,* 79 Pa. Superior Ct. 560 at page 576, and we have made this correction in quoting the paragraph from the record. With respect to the sales of gas by plaintiff in error to consumers at Latrobe, west of the City of Johnstown, and at the City of Altoona, east of Johnstown, plaintiff in error *admits* that the Public Service Commission of Pennsylvania has *full jurisdiction* over it, but contends that the Commission has no jurisdiction over the sales which it makes from the same pipe line at an intermediate point, viz., the City of Johnstown. In other words, plaintiff in error concedes the jurisdiction of the Commission over every sale of gas it makes in the State of Pennsylvania except those made at the City of Johnstown. The inconsistency of the position of plaintiff in error is apparent; for if the Commission has jurisdiction over it at a point of distribution along its line west of Johnstown, for instance Latrobe, it follows that it retains that jurisdiction as to all points on its pipe line east of and beyond such point, and that when any possible interstate movement once ended in its pipe line it could not oust the jurisdiction of the Commission and reassume the character of interstate commerce as the gas continued its flow eastwardly. In considering the issue raised in this case it is to be borne in mind that there is no specified thing transported from

one state across a state line into another state intended from its start upon its journey to be delivered to a specified place by a continuous forward moving act of transportation in which the owner controls the destination.

The learned counsel for plaintiff in error lay considerable stress upon the case of *United Fuel Gas Company vs. Hallanan, 257 U. S. 277,* but it is difficult to see how this case has any application to the case at bar. That was an attempt by a state to tax the transportation by pipe line of gas, the great body of which started for points outside the state and went to them. No such question is involved in our case.

In the minority opinion of the Superior Court of Pennsylvania *(Peoples Natural Gas Company vs. Public Service Commission of Pennsylvania, 79 Pa. Superior Ct. 560; R. 275-282)* it is sought to draw an analogy between the instant case and the Landon case but in so doing the fact is overlooked that in the Landon case the Kansas Natural Gas Company had lines in all three states—Oklahoma, Kansas and Missouri—and produced gas in Oklahoma which it transported in its own pipe lines into and across Kansas and over into Missouri, whereas the Peoples Natural Gas Company does not own or control any pipe line outside the State of Pennsylvania. It is suggested for the purpose of overcoming this distinction that the Hope Company of West Virginia and the Peoples Company of Pennsylvania might be considered as together engaged in interstate commerce.

We have already pointed out that the plaintiff in error has proven that they are "entirely separate and independent," and we submit that under that testimony these gas companies must be considered as separate, distinct and independent, corporate entities, and further that the delivery from the Hope to the Peoples Company at the state line ends any interstate movement which may have existed south of that line.

Commingling of West Virginia Gas with Gas Produced in Pennsylvania

We do not concede that the commingling of West Virginia gas with the gas produced in Pennsylvania is, under the decisions in the Landon and Kansas Natural Gas Company cases, supra, immaterial. On the contrary we suggest that under the facts in the case at bar it is a very material circumstance. The intermingling of the gas produced in Oklahoma with the gas produced in Kansas in the cases cited was not an important circumstance for the reason that the mingled product was transported into Missouri and then sold. In the case at bar, however, the mingled product is all disposed of in Pennsylvania. In the course of the opinion of the Superior Court of Pennsylvania on the first appeal *(Franke vs. Johnstown Fuel Supply Company,* 70 Pa. Superior Ct. 446; R. 190, 198 at page 197, fol. 821a) Judge HENDERSON, writing the opinion of the Court, said with respect to this matter:

> "Nothing has been said thus far of that aspect of the case with respect to which it is contended that the gas obtained from West Virginia was taken out of the operation of the federal commerce law because it became mingled with the general body of property in the state. It is property of a peculiar character necessarily confined in tanks or pipes and distributed from place to place by pressure through diverging pipes. It was not consigned from one state to a terminus in another. It was delivered into the containers of the appellant in the state of Pennsylvania and controlled by the latter in its distribution from place to place and so mingled with the Pennsylvania gas that its identity as an imported product was entirely lost. It would seem to have as fully lost its distinctive character as an import as did the coal in the case of Brown vs. Houston, 114 U. S. 622, where a flat-boat loaded with coal at Pittsburgh and floated down the river to

> Louisiana was held to have become merged in the property of the state although it remained in the boat in the same condition in which it was shipped from Pittsburgh and was merely moored to the river bank. A like conclusion was reached in Pittsburgh Coal Co. vs. Bates, 156 U. S. 577."

There are other minor distinctions between the facts in the case now at bar and the facts in the Landon case and the case of Missouri vs. Kansas Natural Gas Company, supra, which might be pointed out, and other cases which are of interest upon the interstate commerce feature of this case are *State, ex rel., Caster vs. Flannelly*, 95 Kan. 372, P. U. R. 1916, C 810, and *West Virginia and Maryland Gas Company, et al. vs. Albert G. Towers, et al.*, 106 Atlantic, 265, P. U. R. 1919, D 332.

In the first mentioned case it is held that it is no part of interstate commerce to sell natural gas to consumers thereof in the State of Kansas when the gas sold is produced both in Kansas and Oklahoma and that produced in Oklahoma, after being conveyed in pipe lines to Kansas, is so commingled in the pipe lines conveying the same with gas produced in Kansas, that it is impossible to separate or distinguish the gas produced in Oklahoma from that produced in Kansas, and after being so commingled it is conveyed from city to city through the State of Kansas and is then sold to the consumers thereof. In the course of the opinion in that case the following illustration, which seems to be applicable to our case, is used:

> "A car load or a train load of wheat may be shipped from this state [Kansas] to Kansas City, Missouri, and be there placed in an elevator and mixed with another car load or train load of wheat from some county in Missouri, and may be held for delivery to someone who has ordered it, or be held for sale to any one who will buy it. Will that wheat from Kansas, after being commingled with the wheat from Missouri,

be under the protection of the interstate commerce clause of the Federal Constitution and outside the control of Missouri, under laws legally enacted by its legislature? If this question is answered in the affirmative, it extends interstate commerce much farther than any decision of any court yet rendered, of which we have any knowledge or information."

Summary

We respectfully submit that, under all the decisions, a domestic gas company which neither produces nor buys any part of its product, and has no lines, outside of Pennsylvania, but produces a part of its product within this state, and buys the remainder at the state line, and, in the general course of its business, sells and delivers the mingled commodity to its consumers to be used by them at their burner tips, is not engaged in interstate commerce, although in one instance it delivers gas from its pipe line at an intermediate point thereon to another gas company for distribution by it to consumers in a single city.

III

EVEN IF IT BE HELD THAT THE PLAINTIFF IN ERROR IS ENGAGED IN INTERSTATE COMMERCE, THE ORDER OF THE PUBLIC SERVICE COMMISSION AND THE DECREES OF THE APPELLATE COURTS OF THE COMMONWEALTH OF PENNSYLVANIA DO NOT AFFECT SUCH COMMERCE IN ANY WAY.

In view of the fact that Congress has expressly excepted water and natural and artificial gas companies out of the Interstate Commerce Act of Feb. 4, 1887, U. S. Compiled Stat. 1916, Ann., page 9053, Sec. 8563, the extent to which a state has authority to control the rates and service of natural gas companies, admittedly engaged in interstate commerce, had not been clearly defined prior to the deci-

sion of this Court in the above cited case of *Missouri et al. vs. Kansas Natural Gas Company, 265 U. S. 298.*

In the language of Mr. Justice SUTHERLAND:

> "The line of division between cases where, in the absence of congressional action the state is authorized to act, and those where state action is precluded by mere force of the commerce clause of the Constitution is not always clearly marked."

After considering the case of *Pennsylvania Gas Company vs. Public Service Commission, 252 U. S. 23,* mentioned but not discussed in Section II of this argument, and the Landon case, supra, this Court pointed out the distinction between these cases and clearly defined the extent of state power and control. The Pennsylvania Gas Company case was fully considered both in the Superior and Supreme Courts of Pennsylvania and, in speaking of that case, Mr. Justice SUTHERLAND said:

> "There the Gas Company, a Pennsylvania corporation, transmitted gas from Pennsylvania into New York and sold it directly to the consumers. The service to the consumers, which was the theory for which the regulated charge was made, was essentially local and the decision rests upon this feature. Mr. Justice DAY, in the course of the opinion, said (p. 31): 'The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the State, nevertheless the service rendered is essentially local, and the sale of gas is by the company to local consumers who are reached by the use of the streets of the city in which the pipes are laid, and through which the gas is conducted to factories and residences as it is required for use. The service is similar to that of a local plant furnishing gas to consumers in a city.' The commodity, after

reaching the point of distribution in New York was subdivided and sold at retail."

There is of course no similarity between the facts in the Pennsylvania Gas Company case and the controlling facts in the case at bar. The Pennsylvania Gas Company was clearly engaged in interstate commerce because it produced gas in Pennsylvania and transported it in its own pipe lines across the state line into the State of New York and there sold it in various towns to consumers at their burner tips, and the power of the state under these circumstances to regulate the rates for this local service was upheld by this Court.

After outlining the facts in the Kansas Natural Gas Company case and quoting with approval the language of Mr. Justice HUGHES in the Minnesota Rate Cases, 230 U. S. 352, 396, to the effect that state enactments imposing direct burdens upon interstate commerce must fall, regardless of Federal legislation, Mr. Justice SUTHERLAND proceeded as follows:

"The contention that, in the public interest, the business is one requiring regulation, need not be challenged. But Congress thus far has not seen fit to regulate it, and its silence, where it has the sole power to speak, is equivalent to a declaration that that particular commerce shall be free from regulation. See *Robbins vs. Shelby County Taxing District, 120 U. S. 489, 493.* With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to state regulation. *Public Utilities Com. vs. Landon, supra,* p. 245. In such case the effect on interstate commerce, if there be any, is indirect and incidental. But the sale and delivery here is an inseparable part of a transaction in interstate commerce

—not local but essentially national in character,—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. It is as though the Commission stood at the state line and imposed its regulation upon the final step in the process at the moment the interstate commodity entered the State and before it had become part of the general mass of property therein. See *Brown vs. Houston, 114 U. S. 622, 634.*"

In the concluding portion of the opinion it is pointed out that the Landon case differs from the Pennsylvania Gas Company case only in the fact that the process of division and sale to consumers was carried on by independent distributing companies and not by the importing company and the opinion concludes as follows:

"In both cases the things done were local and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is clearly recognized in the *Landon* case. *The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies.* In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different States. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to

amount to an established course of business. The paramount interest is not local but national, admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental non-action, may be highly necessary to preserve equality of opportunity and treatment among the various communities and States concerned. See, for example: *Welton vs. State of Missouri, 91 U. S. 275, 282; Hall vs. DeCuir, 95 U. S. 485, 490.*" (Italics ours.)

Even if this Court should be of opinion that under the present methods of production and distribution of plaintiff in error the gas in its pipe lines in Pennsylvania is a commodity in interstate commerce, yet plaintiff in error is, we respectfully submit, under all the facts and circumstances in this case engaged in a "local business" within the meaning of the above quoted paragraph, and therefore subject to the regulatory power of the Pennsylvania Commission.

But we are not driven to the necessity of finding support for the order of the Commission and the decree of the Supreme Court of Pennsylvania in the case at bar in the above quoted decision of this Court. The order in no way interferes with the purchase of West Virginia gas at the state line, nor does it impede the distribution of such gas throughout the State of Pennsylvania. In addition to all this we have heretofore pointed out, and now beg permission to repeat, that neither the Public Service Commission, nor any Court in the State of Pennsylvania, has directed plaintiff in error to serve any part of the gas produced in West Virginia and purchased by it at the state line to the Johnstown Fuel Supply Company for use by consumers in the City of Johnstown. Therefore, even if this Court should be of opinion that plaintiff in error is so engaged in interstate commerce that the State of Pennsylvania has no control whatever over the mingled gas in its pipe line at the City of Johnstown, either with respect

to rates or service, it is entirely within the power, and it is the duty, of this Pennsylvania corporation to comply with the order now in question by supplying the requirements of the inhabitants of the City of Johnstown with gas produced by it from its wells in the State of Pennsylvania. Just what gas it shall supply for use at Johnstown is a mere matter of corporate management and control of its supply. The order of the Commission and the decrees of the Superior and Supreme Courts of Pennsylvania have, therefore, no necessary effect whatever upon any interstate commerce which may be found to be present in this case. Moreover, when we look at the necessity for, and purpose of, the Commerce Clause of the Federal Constitution as interpreted in the opinion of this Court in the Kansas Natural Gas Company case, namely: "to preserve equality of opportunity and treatment among the various communities and states concerned," we see instantly that plaintiff in error by its contention in this case is seeking to *destroy* rather than to *preserve* that *equality of opportunity and treatment.* It proposes to indulge in most unjust discrimination against the inhabitants of the City of Johnstown, and to do this under the guise of an appeal to the Commerce Clause of the Federal Constitution. It says in effect to the citizens of Latrobe: "We will furnish you with all the natural gas you may desire to use out of our pipe lines"; but, after exercising its charter rights obtained from the State of Pennsylvania and invoking that State's power of eminent domain to extend that pipe line to the City of Johnstown, it says to the inhabitants of that city, "We will no longer permit any part of the gas in that line to be served to you, but will carry it past you, through an extension of the line over the Allegheny Mountains, and serve it to the citizens of the City of Altoona." This we submit is one of the most outrageous forms of discrimination, and certainly such practices were never intended to be justified and protected by the Commerce Clause of our Federal Constitution.

Conclusion

As is clearly shown by the evidence, and found by the Courts of Pennsylvania, the Johnstown Fuel Supply Company has no other possible source from which to obtain a supply of gas save from plaintiff in error, and if the Public Service Commission of Pennsylvania has no power to restrain plaintiff in error from discontinuing the supplying of gas for use at Johnstown until cause has been shown justifying such discontinuance, irreparable injury will be done the thousands of consumers of natural gas in that city and they will become the victims of the grossest discrimination.

No attempt has been made in this brief to add anything to the able, exhaustive and convincing opinions of Judge Keller for the majority of the Superior Court of Pennsylvania and of Mr. Justice Simpson in expressing the unanimous opinion of our Supreme Court.

Indeed, nothing can profitably be added to these opinions which also necessarily dealt with and disposed of a number of questions arising under the laws of the State of Pennsylvania but which, of course, are not reviewable by your Honorable Court. The only Federal question pressed by the learned counsel for plaintiff in error in this Court relates to the alleged interstate commerce feature of this litigation.

We have endeavored to reply to their argument and, in conclusion and with the utmost deference to your Honorable Court, we earnestly contend that when the principles of law which you have heretofore declared are applied to the real facts in this case the conclusion to be arrived at is that this appeal should be dismissed.

Respectfully submitted,

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